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2d Session

SENATE

REPORT
No. 97-512

FEDERAL ROYALTY MANAGEMENT ACT OF 1982

JULY 30 (legislative day, JULY 12), 1982.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2305]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2305) to ensure that all energy and mineral resources originating on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill (as amended) do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Royalty Management Act of 1982".

FINDINGS AND PURPOSES

SEC. 2. (a) Congress finds that—

(1) the Secretary of the Interior should enforce effectively and uniformly existing regulations under the mineral leasing laws providing for the inspection of production activities on lease sites on Federal and Indian lands;

(2) the system of accounting with respect to royalties and other payments due and owing on oil and gas resources produced from such lease sites is archaic and inadequate;

(3) it is essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments and to provide for

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routine inspection of activities related to the production of oil and gas resources on such lease sites, and

(4) the Secretary should aggressively carry out his trust responsibility in administration of Indian oil and gas resources.

(b) It is the purpose of this Act—

(1) to improve provisions of the mineral leasing laws related to obligations of lessees in the production of oil and gas resources from the Federal and Indian lands and the Outer Continental Shelf;

(2) to clarify and reaffirm the authorities of the Secretary of the Interior to maintain properly a system of information regarding Federal and Indian oil and gas resources in order for him to carry out effectively his duties under the mineral leasing laws;

(3) to permit and encourage the development of enforcement practices to ensure prompt and proper collection of oil and gas revenues owed to the United States and Indian lessors and those due to States in view of the significant Federal interest in assuring prompt and full collections of such royalties; and

(4) to fulfill the trust responsibility in the administration of Indian oil and gas resources.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "Federal land" means all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate;

(2) "Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation;

(3) "Indian lands" means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or an Indian allottee in the conveyance of a surface or nonmineral estate, but does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539);

(4) "Indian tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of Annette Island Reserve, for which land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation;

(5) "lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for and extraction and removal of an oil or gas resource;

(6) "lease site" means any lands or submerged lands on which exploration for and extraction and removal of an oil or gas resource are authorized pursuant to a lease;

(7) "lessee" means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease;

(8) "mineral leasing law" means any Federal law or provision of Federal law authorizing the disposition under lease of oil or gas resources;

(9) "oil or gas resource" means any oil or gas originating from a deposit of oil or gas in or on the Outer Continental Shelf, Federal, or Indian lands subject to disposition under lease under any mineral leasing law;

(10) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 83–31) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(11) "operator" means any person, including a lessee, who is responsible for the operations conducted on a lease;

(12) "production" means those activities which take place for the removal of an oil or gas resource, including such removal, field operations, transfer of an oil or gas resource off the lease, operation, monitoring, maintenance, and workover drilling;

(13) "royalty" means any payment based on the value or volume of production which is due to the United States or an Indian tribe or an Indian allottee on production of an oil or gas resource from the Outer Continental Shelf, Federal, or Indian lands, or any payment owed to the United States or an Indian tribe or an Indian allottee under any provision of a lease;

(14) "Secretary" means Secretary of the Interior or his designee; and

(15) "State" means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

SECRETARIAL AUTHORITIES

SEC. 4. (a) The Secretary shall prescribe such rules and regulations as may be reasonably necessary for the determination and collection of royalties on the production of oil or gas resources, the preparation and retention of records, the filing of reports, the conduct and frequency of audits, the enforcement of security at lease sites and during the process of transporting oil or gas resources from such sites, and the imposition of penalties for failure to conduct properly such activities.

(b) Rules and regulations issued to implement this Act shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding section 553(a)(2) of that title.

(c) In carrying out his functions under subsection (a) of this section, the Secretary may also—

(1) apply to any existing leases, permits, or applications for leases or permits issued under the mineral leasing laws such rules and regulations as may be promulgated under the authorities granted by this Act; and

(2) contract with such non-Federal inspectors, auditors, enforcement officials, and other persons as he deems necessary to aid in the implementation of this Act in addition to entering into cooperative agreements as authorized under section 14 or a delegation under section 15 of this Act.

(d) Whenever the Secretary receives any royalty funds derived from the production of oil or gas resources on Indian lands the Secretary shall deposit the funds in the appropriate Indian account at the earliest practicable date.

DUTIES OF THE SECRETARY

SEC. 5. The Secretary shall—

(a) establish procedures to ensure that authorized representatives of the Secretary will inspect each lease site producing or expected to produce significant quantities of oil or gas resources in any year at least once during such year;

(b) establish and maintain adequate programs providing for the training of all such authorized representatives in methods and techniques of inspection and accounting that will be used with respect to such lease sites; and

(c) select lease accounts for audit either on his own initiative or upon written request by a State, Indian tribe or Indian allottee alleging good cause for selection of an account. The Secretary may also conduct company-wide audits of selected oil and gas companies to determine whether there are any royalty payments owed on Federal or Indian leases.

DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

SEC. 6. (a) Any lessee—

(1) who is required to make any royalty or other payment under a lease or the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary;

(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or the mineral leasing laws.

(b) Any operator shall—

(1) develop and comply with a site security plan designed to protect the oil or gas resources produced or stored on the lease site from theft, which

plan shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances at lease sites;

(2) notify the Secretary not later than the fifth business day after any new well begins production, or after any old well begins new production, of the date of commencement of production; and

(3) prepare and maintain all records and, upon request by the Secretary, submit any such records to the Secretary on the quantities of any oil or gas resource that is produced, stored, used, removed, or sold from the lease site and the method by which such resource is removed.

(c) Any person engaged in transporting by motor vehicle any oil resource from any lease site, or allocated to any such lease site, shall carry, on his person or in his vehicle, documentation showing, at a minimum, the amount, origin and intended destination of the resource.

HEARINGS AND INVESTIGATIONS

SEC. 7. (a) The Secretary may conduct after notice any hearings, investigation, audit, or other inquiry necessary or appropriate to carrying out his duties under this Act. In connection with such hearings, investigation, audit, or inquiry, the Secretary shall also have the power where reasonably necessary—

(1) to require by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;

(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) In case of refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as a contempt thereof and subject to a penalty of up to $10,000 a day.

(c) Any authorized representative of the Secretary may stop or inspect any motor vehicle that he has probable cause to believe to be carrying an oil resource produced under, from any lease site or allocated to any such lease site, for the purpose of determining whether the driver of such vehicle has the documentation required under section 6(c).

(d) No advance notice of any inspection under this Act need be provided to any person: *Provided*, That the Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

(e) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

SEC. 8. In addition to any other remedy under this Act or any other mineral leasing law, the Attorney General or his designee may bring a civil action in the district courts of the United States, which shall have jurisdiction over such actions—

(a) to restrain any violation of this Act; or

(b) to compel the taking of any action required by or under this Act or any mineral leasing law of the United States.

REQUIRED RECORDKEEPING

SEC. 9. In addition to the provisions of existing law and section 6(b)(3) of this Act, any lessee, operator, or person engaged in the transport of an oil or gas resource prior to the first sale of such resource, or any person involved in the first sale of an oil or gas resource subject to this Act, shall establish and maintain any records, make any reports, and provide any information as the Secretary may, by rule, reasonably require for the purposes of implementing this Act or determining compliance with rules or orders prescribed under this Act. Upon the request of any officer or employee duly designated by the Secretary the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee.

ROYALTY INTEREST, PENALTIES AND PAYMENTS

SEC. 10. (a) The first sentence of section 35 of the Act of February 25, 1920, as amended (30 U.S.C. 191), is amended by inserting "including interest charges, and any other moneys, except civil and criminal penalty moneys, collected under the Federal Royalty Management Act of 1982 because of nonpayment, late payment or underpayment of royalties" between "royalties" and "and" and by deleting wherever it appears "as soon as practicable" and inserting in lieu thereof "as often as administratively convenient but at least".

(b) An amount equal to fifty per centum of any civil penalty collected under this Act resulting from activities conducted by a State or Indian tribe pursuant to a cooperative agreement under section 14 or a State under a delegation under section 15, shall be payable to such State or tribe: *Provided*, That such amount shall be deducted from any compensation due such State or Indian tribe under section 14 or such State under section 15.

(c) The Secretary shall charge interest on late royalty payments at a rate determined by the Secretary of the Treasury to provide adequate incentive for timely royalty payment.

(d) All interest charges collected under this Act or other applicable laws because of nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee shall be paid to the Indian tribe or Indian allottee whose royalty payments are affected by such nonpayment, late payment or underpayment.

(e) Notwithstanding any other provision of law, no State will be assessed for any interest or penalties found to be due against the Department of the Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulation of the Department of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Department of the Interior in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to the date of the enactment of this Act: *Provided*, That if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State's share of the overcharge.

EXPANDED ROYALTY OBLIGATIONS

SEC. 11. Any lessee is liable for royalty payments on oil or gas resources lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, under or citation issued under this Act or any mineral leasing law.

CIVIL PENALTIES

SEC. 12. (a) Any person who—

(1) after due notice of violation fails or refuses to comply with any requirements of this Act or any mineral leasing law, or any rule or regulation thereunder;

(2) fails to permit inspection authorized in section 7(c) or fails to notify the Secretary of any assignment under section 6(a)(2); or

(3) after due notice of violation fails or refuses to comply with the terms of any lease;

shall be liable for a penalty of up to $500 per violation for each day such violation continues. A penalty under this subsection may not be applied to any person who is otherwise liable for a violation of paragraphs (1) or (3) if:

(A) the violation was discovered and reported to the Secretary or his authorized representative by the liable person and corrected within thirty days; or

(B) after due notice of violation has been given to such person by the Secretary or his authorized representative, such person has corrected the violation within thirty days of such notification.

(b) Any person who—

(1) knowingly or willfully fails to make any royalty or other payment required under a lease, as specified by statute, regulation, order or terms of the lease, by the date specified in same;

(2) fails or refuses to permit lawful entry, inspection, or audit; or

(3) fails or refuses to comply with section 6(b)(2) of this Act;

shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(c) Any person who—

(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) knowingly or willfully takes or removes, transports, or diverts any oil or gas resource from any lease site without having valid legal authority to do so; or

(3) purchases, accepts, sells, transports, or conveys to another, any oil or gas resource knowing or having reason to know that such resource was stolen or unlawfully removed or diverted,

shall be liable for a penalty of up to $25,000 per violation for each day such violation continues.

(d) No penalty under this section shall be collected until the person charged with a violation has been given the opportunity for a hearing on the record.

(e) The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged.

(f) On a case-by-case basis the Secretary may compromise civil penalties under this section and may, in his discretion, decline to assess any penalty under this section.

CRIMINAL PENALTIES

SEC. 13. Civil penalties imposed under section 12 of this Act shall be in addition to any criminal penalties available under the laws of the United States.

COOPERATIVE AGREEMENTS

SEC. 14. (a) The Secretary is authorized to enter into a cooperative agreement with any State or Indian tribe to share oil or gas royalty management information, in a timely manner and on a regular basis, to secure information for the cross checking of company submitted data, to carry out inspection, auditing and enforcement activities under this Act in cooperation with, and under delegated authorities from, the Secretary, and to carry out any other activity described in subsections (c), (d), and (e) of section 7 of this Act. The Secretary shall not enter into any such cooperative agreement with a State with respect to any such activities on Indian lands, except with the permission of the Indian tribe involved.

(b) Any cooperative agreement entered into pursuant to this section shall be in accordance with the provisions of the Federal Grant and Cooperative Agreement Act of 1977, and shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed upon activities.

(c) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian tribe of any information provided to such individual, State, or Indian tribe pursuant to any cooperative agreement authorized by this section or a delegation under section 15.

(d) Whenever any individual, State or Indian tribe has obtained possession of information pursuant to a cooperative agreement authorized by this section, or any individual or State has obtained possession of information pursuant to a delegation under section 15, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer

or employee of the United States or of any department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof.

DELEGATION TO STATES

SEC. 15. (a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to conduct inspections, audits, and investigations, and to collect royalties, interest, and civil penalties to any State with respect to all the Federal lands or Indian lands within the State:

Provided, however, That the Secretary may not undertake such a delegation with respect to any Indian lands, except with the permission of the Indian tribe involved.

(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this Act as the State has requested, if the Secretary finds that—

(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section; and

(3) such delegation will not create an unreasonable burden on any lessee, with respect to the Federal lands and Indian lands within the State.

(c) The Secretary shall promulgate regulations which define those functions, if any, which must be carried out jointly in order to avoid duplication of effort, and any delegation to any State must be made in accordance with those requirements.

(d) The Secretary shall by rule promulgate standards and regulations, in conformance with section 4(a) of this Act, pertaining to the authorities and responsibilities under subsection (a), including standards and regulations pertaining to:

(1) audits performed;

(2) records and accounts to be maintained; and

(3) reporting and collection procedures to be required by States under this section.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective system of accounting and payment of royalties and other payments required under Federal leases will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any atuhority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation.

(f) The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year.

(g) In the event the State is delegated authority to collect moneys under Federal leases under this Act, such State shall deposit any such royalties, interest, penalties, or other moneys into the general fund of the United States Treasury as miscellaneous receipts, as often as administratively convenient, but at least every quarter during the fiscal year, in a form and manner to be prescribed by regulation promulgated by the Secretary, and such funds shall be dispersed by the United States in accordance with the provisions of section 35 of the Act of February 25, 1920, as amended (30 U.S.C. 191).

RELATION TO OTHER LAWS

SEC. 16. (a) No provision of this Act limits the authority of the Inspector General of the Department of the Interior under provisions of the Inspector General Act of 1978 (P.L. 95–452) as amended.

(b) No provision of this Act impairs or affects lands and interests in land entrusted to the Tennessee Valley Authority.

(c) The penalties or authorities provided in this Act are supplemental to, and not in derogation of, any penalties or authorities contained it any other law.

FUNDING

SEC. 17. Effective October 1, 1982, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary for the cooperative agreements authorized by section 14, and delegations authorized by section 15.

STATUTE OF LIMITATIONS

SEC. 18. Except in the case of fraud, any action to recover penalties under this Act shall be barred unless the action is commenced within six years after the date of the act or omission which is the basis for action.

STUDY OF OTHER MINERALS

SEC. 19. (a) The Secretary shall study the question of the adequacy of royalty management for coal, uranium and other energy and nonenergy minerals on Federal and Indian lands. The study shall include proposed legislation if the Secretary determines that such legislation is necessary to ensure prompt and proper collection of revenues owed to the United States, the States and Indian tribes or Indian allottees from the sale, lease or other disposal of such minerals.

(b) The study required by subsection (a) of this section shall be submitted to Congress not later than one year from the date of the enactment of this Act.

(c) Nothing in this Act shall be construed to reduce the responsibilities of the Secretary to ensure prompt and proper collection of revenues from coal, uranium and other energy and nonenergy minerals on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities.

SEVERABILITY

SEC. 20. If any provision of this Act or the applicabiilty thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

2. Amend the title so as to read:

A bill to ensure that all oil and gas resources originating on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes.

PURPOSE

The purpose of S. 2305, as reported, is to improve the provisions of law related to obligations of lessees of Federal and Indian oil and gas leases, to clarify the authorities of the Secretary of the Interior to maintain a proper system of royalty management, accounting and collection, and to encourage enforcement practices necessary to ensure proper collection of revenues.

BACKGROUND AND NEED

Since 1959, the General Accounting Office has been reporting on the need for major improvements in the Federal Government's oil and gas royalty accounting system. More recently, Congressional hearings have focused both on the archaic nature of the royalty accounting system and on the problem of oil and gas theft from federal and Indian lease sites that lack adequate security measures.

To determine the nature and extent of these problems, Secretary Watt on July 8, 1981, appointed a Commission on Fiscal Accountability of the Nation's Energy Resources (now commonly known as the Linowes Commission, after its Chairman, David F. Linowes) and charged it with responsibility to: (1) examine the allegations of substantial underpayment of oil and gas royalties owed to the Federal Government, Indian tribes, and States; (2) investigate the allegations of theft of oil from federal and Indian lands; and (3) make recommendations for improvements that would rectify these problems. On January 21, 1982, after hearing from dozens of witnesses from the Administration, affected States and Indian tribes, and the oil and gas industry, the Linowes Commission submitted its findings and recommendations in the form of a 267-page report to the Secretary.

The Commission's findings basically confirm the reports of the General Accounting Office. The federal royalty accounting system lacks effective accounting procedures and is understaffed. The system does not provide for the verification of data reported by oil and gas lessees, and lease account records are so unreliable that federal royalty managers often do not know which lessees have paid royalties and which lessees have not. Penalties for late payment or underpayment are rarely imposed. Because of these shortcomings, the Linowes Commission concluded that "the industry is essentially on an honor system." In addressing the problem of theft, the Commission could not determine the amount of oil and gas stolen but did find that lax security at federal and Indian lease sites is well-documented and is an open invitation to theft.

Based on these findings, the Commission made 60 recommendations. The more significant recommendations are summarized as follows:

1. That the Department of the Interior require all oil and gas lessees to:

(a) notify the Department on the first day after new production begins on a lease;

(b) submit a payor plan signed by each of the fractional owners of the leasehold indicating the payment share of each fractional owner;

(c) develop a lease site security plan detailing how that operator will carry out his responsibility to ensure security of the site.

2. That the Department seek legislation that would give it the authority to:

(a) establish a self-sustaining fund that would pay the costs of supplementary audits and inspections that are in addition to those planned for and funded by the routine federal royalty management budget. The fund would take a percentage of the royalties collected from all existing and future Federal and Indian leases (both offshore and onshore) before any funds are distributed to the States, Indian Tribe, or the U.S. Treasury;

(b) raise the minimum royalty for onshore production from 12½% to 16⅔%, the current royalty rate for offshore production;

(c) assess civil penalties for site security violations, nonpayments, late payments, underpayments, error-ridden reports, and failure to submit or update the required payor plan;

(d) empower federal inspectors (within Constitutional limits) to stop tanker trucks off the lease site to check that the driver

possesses a run ticket. Currently, the inspector's authority ends at the lease site boundary;

(e) prohibit the purchase of undocumented crude oil and require purchasers of crude, up to and including refiners, to keep documentation showing from whom they purchased the product and from what lease or unit.

3. That the Department systematically cross-check production and sales records to determine if the correct amount of royalties are being paid.

4. That the Department carry out the 25 "look-back" audits it has underway on an accelerated schedule with completion no later than the end of calendar year 1983, and that audits of companies in addition to the first 25 be initiated as soon as possible, but not later than the end of calendar year 1983.

5. That the Secretary provide additional staff to the royalty management program in the accounting, auditing, and product valuation programs as soon as possible and protect the royalty management program from across-the-board cuts and personnel freezes.

6. That the Secretary announce an expanded policy of cooperation with States and Indian tribes in the royalty management area; namely, that the Department will share information and royalty management functions (including inspections) with affected States and Indian tribes to the maximum extent practicable.

7. That the Secretary immediately move the royalty management function out of the U.S. Geological Survey, to a location to be determined by the Secretary, but reporting to an Assistant Secretary or the Under Secretary.

On January 21, 1982, Secretary Watt announced his approval of all 60 of the Commission's recommendations and that he planed to implement them as soon as possible. He immediately removed the royalty management function from the U.S. Geological Survey and established a new Minerals Management Service. Secretary Watt also created a legislative task force to draft the omnibus royalty management legislation that became the basis of the bill reported by the Committee.

Legislative History

S. 2305 was introduced by request on March 30, 1982. Prior to the introduction of the bill the Committee held hearings in Casper, Wyoming on August 11, 1981, to consider testimony from public witnesses concerning the operation of the federal royalty management system. Hearings were subsequently held May 3rd and 17th, at which time testimony on S. 2305 was received from public witnesses and the Administration.

On May 19, June 9, 10, 16, 17, 23, 30, July 21, S. 2305 was considered by the Full Committee and ordered reported with amendments on July 27, 1982.

Similar legislation, H.R. 5121, is presently pending before the House Committee on Interior and Insular Affairs.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on July 27, 1982, by unanimous vote of a quorum

present, recommended that the Senate pass S. 2305, if amended as described herein.

The roll call vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
McClure	
Hatfield	
Weicker [1]	
Domenici	
Wallop	
Warner	
Humphrey	
Murkowski	
Nickles	
East	
Heinz	
Jackson	
Johnston	
Bumpers	
Ford	
Metzenbaum	
Matsunaga [1]	
Melcher	
Tsongas [1]	
Bradley	

[1] Indicates voted by proxy.

Committee Amendments

The Committee amended S. 2305 to strike all after the enacting clause and insert a substitute text. Aside from technical, clarifying and conforming amendments, the Committee's substitute text made the following substantive changes to the bill as introduced. (The sections refer to the bill as reported.)

The bill's scope was limited to oil and gas resources instead of all mineral resources. The Committee took this action because the Linowes Commission report focused primarily on oil and gas royalty collection problems and because the Committee did not believe that the effect of the bill on other energy and nonenergy mineral resources had been adequately addressed. Section 19 of the bill requires the Secretary to examine the need for legislation relating to royalty collection on other mineral resources.

In section 2 the Committee added findings to the purposes of the introduced bill. Paragraphs (4) of section 2(a) and 2(b) are not intended in any way to expand the trust responsibility or to create any cause of action against the United States that would not exist without the inclusion of the language in the legislation.

In section 3 the term "interest holder" was deleted. Wherever that term appeared in the bill it was replaced with the term "lessee" as redefined. This change reflects the Committee's concern that certain

provisions of the legislation as introduced would have had an undue impact upon persons holding indirect and fractionalized interests in a federal or Indian lease. The amendment clarifies any ambiguity by identifying affected persons in terms of their obligation to make royalty payments.

Section 4(d) was added to require that royalties be deposited in the appropriate Indian accounts at the earliest practicable date. It is intended that the Secretary will consult with the affected Indian tribe or allottees to determine what is the appropriate account. The Committee notes that electronic transfers are one way in which royalty payments to Indian tribes and allottees might be expedited.

A new Section 5(a) was added to provide that lease sites which either produce or are expected to produce significant quantities of oil or gas are to be inspected at least once a year. The Secretary has the discretion to determine which sites are expected to produce significant quantities of oil or gas.

A new Section 5(b) requires the Secretary to establish and maintain a program to train authorized representatives of the Secretary in accounting and inspection techniques.

A new Section 5(c) requires the Secretary to audit selected lease accounts to determine whether any royalty payments are owed on Federal or Indian oil or gas. The Secretary is authorized to select lease accounts for audit on his own initiative, or upon the written request alleging good cause by a State, Indian tribe, or Indian allottee. Discretionary authority is also granted to the Secretary to conduct company-wide audits of selected oil and gas companies to determine whether or not there are any royalty payments still owed on Federal or Indian leases. The Committee understands that the Department of the Interior is currently carrying out the intent of this section and expects that it will continue to reconcile past due accounts and conduct such "look-back" audits on a regular basis while they install their new accounting and collection system. There is concern, as well, by the States that the focus on "look-back" audits will be lost as the Interior Department concentrates on bringing their new system online. In this regard, the Committee expects that the Department will report to the Committee on a regular basis the progress of the new accounting and royalty collection system, and the status of current accounts.

Section 6(a)(1) modifies the provision of the bill as introduced to clarify that only lessees, as defined in the amendment, are required to make royalty or other payments due in such time and manner as may be specified by the Secretary. The Committee intends that in the future no royalty payment should be required until 45 days have elapsed after the end of the accounting period during which oil or gas is saved, removed, or sold from the lease. However, this provision is not intended to nullify more stringent requirements which may be negotiated between Indian lessors and lessees.

Section 6(a)(2): The bill as introduced contained a provision requiring notification of the assignment of a broad range of interests, obligations and responsibilities. The Committee narrowed this section to require notification only of assignments of the obligation to make any royalty or other payment.

Section 6(b)(1) alters the bill as introduced by placing the burden of developing a site security plan on the operator rather than on the lessee. The provision was also amended to require the Secretary to take into account the variety of circumstances existing at lease sites in prescribing minimum standards for site security plans. It is the Committee's intent that the minimum standards reflect the variety of security needs existing at various lease sites or categories of lease sites. For example, the site security measures appropriate to an offshore lease site are different from the security measures appropriate to an onshore lease site.

Section 6(b)(2) modified the provision of the bill as introduced which required first-day notification of new well production. The Committee amendment requires an operator to provide notification not later than the fifth business day after any new well begins production or after an old well begins new production. The Committee recognized that the remoteness of some lease sites or normal business practices might make notification on the first day impracticable. However, the Committee intends that notification be given expeditiously, but in no case later than the fifth business day. The Committee intends to require notification on old wells which begin new production only in those instances where an old well has not been producing for a significant period of time. A well which stops production to conduct maintenance activities, or for emergencies would not be covered by this section. The Committee intends to cover those situations when old wells begin new production as a result of new recovery techniques or circumstances which make previously uneconomic production viable.

Section 6(b)(3): The bill as introduced required an operator to prepare and maintain records regarding the quantities of oil or gas produced, stored or removed from the lease site. The Committee expanded this requirement to include oil or gas "used" on or "sold" from the lease site. The Committee intends that the term "used" include oil or gas that is flared, reinjected, or used for production enhancement or facility operations. The term "sold" was included to allow deletion of a subsection of the bill as introduced which required that an operator provide information concerning the sale or distribution of oil or gas produced from the lease site.

Section 6(c): The bill as introduced required that any person transporting by motor vehicle any mineral resource from a federal or Indian lease site must carry documentation (commonly known as a run ticket) showing from whom the resource was obtained and from which lease site or unit it was produced. As reported, subsection 6(c) applies this requirement to oil or gas from a federal or Indian lease site, "or allocated to such lease site. . . ." This additional language is intended to apply where an oil or gas lease site is combined with a non-federal tract pursuant to a unitization or other agreement. In such circumstances, the run ticket requirement applies to oil or gas allocated to the lease site regardless of whether the oil or gas is extracted from the lease site or the non-federal tract. The Committee amendment also provides that, as a minimum, run tickets shall slow the origin, amount, and destination of the resource. The term origin includes commingling facilities.

Section 7 modifies the provisions of the bill as introduced regarding the Secretary's authority and powers to conduct hearings, audits, in-

spections, and inquiry functions. The Committee's intent was to clarify, simplify and eliminate redundant or confusing provisions while retaining the basic authorities. For example, the subsection granting the Attorney General authority to seek certain injunctive relief was deleted from this section, but his general authority to seek injunctive relief may be found in section 8.

The specific authority of States or Indian tribes to seek injunctive relief under this bill was eliminated without prejudice to any authority which may be available under existing law. Other references to States or Indian tribes acting pursuant to cooperative agreements were deleted, but are addressed in section 14 and section 15.

Section 7(a) contains a modification to the provision of the bill as introduced, which adds a notice requirement to the Secretary's authorities and provides that the delineated powers shall be used when reasonably necessary.

Section 7(c): As introduced, S. 2305 specifically empowered authorized representatives of the Secretary to stop and inspect motor vehicles carrying oil or gas under limited circumstances to determine whether or not the driver of the vehicle has the documentation required under the Act. Under the introduced bill, in order to stop a vehicle:

(1) the vehicle must be on a lease site or within a jurisdiction where there is a valid state or tribal requirement that certain documentation be carried whenever oil or gas is transported by motor vehicle;

(2) there must be probable cause to believe that the required documentation is lacking;

(3) there must be probable cause to believe that the oil or gas being transported is from a lease site on Federal or Indian lands.

The Committee's amendment removes the first two of these limitations and deletes the authority to stop and inspect motor vehicles carrying gas. The Committee is unaware of any substantial use of motor vehicles to transport natural gas produced on Federal or Indian lands, and therefore restricted the authority under this subsection to vehicles transporting oil.

The Committee was concerned that the authority of any representative of the Secretary to stop and inspect a motor vehicle carrying oil from Federal or Indian lands in order to examine the documentation required under this Act be available even though the vehicle in question is stopped and inspected off the lease site. The Linowes Commission also recommended that this kind of authority be established. A central purpose of this Act is to improve methods of monitoring activities related to the production of oil from Federal and Indian lands. If a representative of the Secretary may exercise "stop and search" authority only when actually on a lease site or within certain jurisdictions, the usefulness of the authority in facilitating apprehension of criminals or deterrence of crime will be significantly reduced. Moreover, if such a representative must first have probable cause to know that documentation is lacking with respect to a particular vehicle, the usefulness of the authority in this regard will be very substantially reduced. The Committee was also concerned that the "stop and search" power not be used to harass law abiding citizens who might be transporting non-Federal oil.

The Committee provision therefore requires that a representative of the Secretary to have probable cause to believe that oil transported by motor vehicle actually came from a lease site on Federal or Indian lands. Persons engaged in the development and production of oil from these lands do so of their own volition and enter into a close relationship with the Federal Government to accomplish a task—the production of oil subject to royalty—in which the Federal Government has a strong interest. This provision is intended to protect that interest in every reasonable way while preserving the rights of individuals under existing law. Thus the manner in which this authority is exercised, including its exercise beyond the immediate proximity of any lease site and the manner in which inspections are carried out wherever they are carried out would continue to be governed by existing constitutional, statutory and case law. The Committee expects that the Secretary will consult with the Attorney General in developing any rules or regulations implementing this section.

Section 7(d): As introduced, S. 2305 restated the authority of the Secretary to inspect lease sites covered by the Act. The Committee amendment assumes the existence of this authority in the mineral leasing laws and retains only those provisions of S. 2305 as introduced which clarify and supplement this basis authority for purposes of this Act. These provisions include a right to enter any lease site for purposes of an inspection or investigation under this Act and to conduct inspections without advance notice under guidelines promulgated by the Secretary.

Section 7(e): This provision is unchanged from the bill as introduced. The Committee intends that the Secretary shall have only such right to enter upon or travel across lease sites as the operator has acquired, or is otherwise granted by law, lease or other legal documents. The Committee does not intend to give either the Secretary or the lessee rights over adjoining private property, including situations where the surface and mineral estates are not in the same ownership, that they do not already have by law or agreement.

Section 8.—Injunction and Specific Enforcement: The bill, as introduced, authorized the Attorney General to bring a civil action in the district courts of the United States to restrain any violation of this Act or to compel the taking of any action required by or under this Act or any other mineral leasing law. The Committee retained this authority as section 8, but deleted a subsection that provided that the civil action may be brought in the United States District Court for the District of Columbia or for the judicial district wherein the act, omission, or transaction constituting a violation under this Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business. The Committee intends that venue be determined in accordance with applicable laws and rules.

Section 9 modified the recordkeeping required of the bill as introduced, to significantly narrow its scope. The Secretary may by rule reasonable require records to be kept by any person engaged in the transport of oil or gas prior to the first sale or any person involved in the first sale. The Committee recognized that the Secretary must have sufficient recordkeeping authority to enable him to gather the data necessary to verify the amount of oil or gas originating from a Federal or Indian lease site upon which royalty is due and to ensure

that the proper royalty is paid. However, recordkeeping after the first sale of the resources was not believed to be necessary by the Committee to accomplish the purposes of this bill and therefore was not authorized. The section was also modified to ensure that duplicate copies of required reports would be made available to the Secretary upon request by an authorized agent.

Section 10: As introduced, S. 2305 amended existing law to provide for the sharing with any State of interest charges collected in connection with the royalties from production of oil and gas on Federal lands in such State. Subsection 10(a) of the Committee amendment makes clear that criminal penalties collected under this Act would not be shared with any State.

Subsection 10(b) provides for the sharing with a State or Indian tribe of civil penalty moneys collected under this Act, which moneys result from activities conducted by the State or tribe under a cooperative agreement or other delegation pursuant to this Act. The Committee intends that to qualify for a share of any civil penalty under this subsection the "activities conducted" by a State or tribe be substantial and contribute significantly to the success of the action resulting in the collection of the penalty. Such activities need not consist of actions in the legal sense, and may include audits or inspections conducted by the State or tribe. The Committee amendment also provides that the amount of any State or tribal share under this subsection will be deducted from compensation provided the State under sections 14 or 15 or the tribe under section 14 of the Act.

The Committee amendment in subsection 10(c) modifies the provision of S. 2305 requiring the Secretary to charge interest on late royalty payments. The bill as introduced contained a specific formula upon which this interest rate would be determined. The Committee amendment substitutes a goal for the formula by requiring that the rate be set so as to provide adequate incentive for timely payment of royalties. A higher-than-market interest rate could be prescribed.

Subsection 10(d) of the Committee amendment requires the sharing of interest charges with respect to royalties on oil or gas production from Indian lands with the tribe or Indian allottee involved. This requirement was not contained in the bill as introduced and was included by the Committee to codify current practice of the Secretary.

Section 10(e): The Committee also included in the bill as reported a specific provision addressing the disposition of interest, penalties and overcharges which may result from a controversy involving the Department of the Interior, the Department of Energy, and certain oil refiners over the certification of oil taken in kind by the Department of the Interior. This controversy refers to actions taken during the period of mandatory wellhead price and allocation controls under the Emergency Petroleum Allocation Act of 1973 (EPAA). The Committee takes no position on the issues under consideration in any cases which may arise as a result of this controversy. However, the Committee is concerned that decisions made during the period of effectiveness of EPAA regulations by employees of the Department of the Interior about compliance with the price and allocation rules embodied in these regulations could lead to a significant hardship for States in the event that the pricing of oil subject to the provisions of the EPAA and

taken in kind by the Department of the Interior is found to involve overcharges.

The Committee amendment provides that, whatever may be decided about these alleged overcharges, no State may be assessed any interest or penalties found due against the Department of the Interior in connection with any such overcharges. With respect to the principal amount of any overcharge, the State share shall be assessed against amounts due such State as a result of audits of royalty accounts for transactions which took place prior to the enactment of this Act. The Committee expects that a thorough audit of these accounts will result in substantial refunds to the Federal Government, the States, and Indian tribes and Indian allottees. The Committee intends that any State share which may result from final determination of any of the alleged overcharge cases discussed above be assessed first against amounts which are recovered and due the State as a result of a complete audit of the transactions which can reasonably be expected to yield refunds to the State. Only after these "look back" audits have been completed may any share of an overcharge be assessed against the State itself.

Section 11 modifies the provision of the bill as introduced which would have subjected oil or gas used for exploration, production, lost or wasted, to royalty payments. The Committee amendment restricted the new royalty obligation to oil or gas lost or wasted due to negligence on the part of the operator, or due to failure to comply with this Act or other mineral leasing laws.

Section 12.—Civil Penalties: The Committee made substantial modifications to the civil penalty provisions of S. 2305 as introduced. These provisions set forth the actions prohibited under the Act and the range of civil penalties associated with these actions. As introduced, S. 2305 provided a civil penalty of up to $10,000 per day for all violations. However, the bill also provided specific discretionary authority to the Secretary to modify any such penalty on a case-by-case basis after taking into account circumstances enumerated in the bill.

The Committee understands that in any event the Secretary would be authorized to modify any civil penalty under this Act in accordance with established administrative procedure under existing law. However, the Committee feels strongly that administrative discretion should not be the principal mechanism through which the severity of punishment is matched to the seriousness of the offense.

Therefore, the Committee amendment attempts to distinguish between those violations which ought to lead to a very large civil penalty and those for which liability should be reduced. In making this distinction a balance must be struck between the need to deter violations of the Act and the need to avoid a situation in which exposure to very severe penalty liability for relatively minor or inadvertent violations of necessarily complex regulations becomes a major disincentive to produce oil or gas from lease sites on federal or Indian lands. The Committee attempted to achieve this balance by providing a requirement of notice of violation and a lower civil penalty limit for certain violations of the Act and a steeply rising civil penalty liability for serious violations knowingly or willfully committed.

Section 13 of the Committee amendment provides that the civil penalties specified in section 12 are in addition to any applicable criminal penalties in existing law. The bill as introduced contained specific new criminal penalties which would have applied to violations under this Act. The Linowes Commission did not make any recommendation regarding new criminal penalties and the Committee believes that existing criminal penalties, including those for theft, fraud, and making false statements, are adequate with the addition of the new civil penalties provided by the bill.

Section 14 of the Committee amendment added enforcement activities to the duties which may be carried out by a State or Indian tribe pursuant to a cooperative agreement with the Secretary. The Committee notes that responsibilities to be carried out under cooperative agreements are within the discretion of the Secretary. It is the intent of the Committee that the Secretary use his discretion to negotiate cooperative agreements which avoid duplication of effort and information, and which do not create a burden on operators or lessees.

This section and Section 15 regarding delegation of duties, provide the Secretary, the States and the Indian tribes, the flexibility to assist one another in the common goal of an effective and efficient royalty management system.

Section 15.—Delegation to States: The Committee adopted an amendment which provides a mechanism available to States which is separate and distinct from the authority of the Secretary to enter into cooperative agreements with States and tribes under Section 14. This new section provides for the discretionary delegation by the Secretary to any State of the authorities and responsibilities of the Secretary under this Act to conduct inspections, audits, and investigations, and to collect royalties, interest and civil penalties. Only those authorities and responsibilities which are requested may be delegated. However, the Secretary may, on a case-by-case basis, refuse to delegate any requested authority or responsibility. A delegation under this section may be made only if the findings set forth in subsection (b) have been made for the State requesting the delegation. The Committee is concerned that the exercise of authority under this section not lead to a proliferation of state programs with differing accounting standards, reporting requirements and inspection and enforcement procedures. The Committee therefore expects that the rules of the Secretary under this section will reflect careful consideration of the need for a uniform and understandable system of oil and gas royalty management assuming a sharing of responsibilities and functions among the Federal Government and several states and, possibly, by virtue of the provisions of section 14 a number of tribes. The Committee further expects that the Secretary will exercise his discretion under this section with care and not delegate any of his authorities or responsibilities under this Act unless such delegation would enhance the prospects of achieving this Act's purposes. The Committee also expects that the Secretary will not hesitate to use the authority to revoke any delegation under subsection (e) when appropriate.

Section 15 also provides for compensation to any State for costs necessary to carry out delegated activities. The Committee under-

stands that the amount of compensation will be an element of negotiation between the Secretary and the State concerning the terms and conditions of any proposed delegation. The costs to which this subsection refers are intended to be incremental costs to the State which result from assumption of delegated functions, not a Federal payment of costs which the State would not have incurred if the delegation had not taken place. Costs for which compensation is provided may include overhead costs.

Section 16 replaces the complex section of the bill as introduced regarding the relationship of this bill to existing law, with a simple statement that the provisions of this Act are meant to be in addition to the penalties and authorities contained in existing law. The Committee amendment also adds subsections which specifically preserve the authorities of the Inspector General of the Department of the Interior and the Tennessee Valley Authority.

Section 17: The bill as introduced provided that up to one percent of the royalties collected would be deducted to reimburse the U.S. Treasury for amounts appropriated by Congress for royalty management activities. The deduction would have occurred prior to the distribution of such royalties and after payment of windfall profit taxes. The provisions would have changed existing law by requiring States and Indian tribes to contribute a fraction of their royalties to the cost of royalty management. The Committee determined that it would be more appropriate to fund the royalty management program through an authorization to appropriate such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary for the cooperative agreements authorized by Section 14, and delegations authorized by Section 15.

Section 18: The Committee added the six-year statute of limitations contained in Section 18 which is intended to run from the date of the initial act which is the basis for the cause of action. In adopting a six-year statute of limitations, the Committee intends that persons subject to the record-keeping requirements of the Act not be burdened with the need to maintain records for longer than six years. The Committee also intends that there be no statute of limitations in the case of fraud.

Section 19 is a new section added by the Committee requiring a study of the adequacy of royalty management for coal, uranium and other minerals. The study will include proposed legislation if necessary. The Committee did not believe the bill as introduced reflected adequate consideration of the effect of some of its provisions on other resources such as coal, and believes that a careful review and report by the Department should be undertaken.

Section 20 adds a severability clause to the bill.

The Committee deleted several provisions that appeared in the Administration's bill which is found in the Executive Communications section. The Committee deleted section 9, which amended the Outer Continental Shelf Lands Act, because the Committee determined that the amendments were not appropriate to this legislation.

The Administration's bill, as submitted, contained a section 11, entitled "Value of Production for Royalty Purposes." The proposals embodied in this section were not addressed by the Linowes Commission. The Committee dropped the section without prejudice. The Com-

mittee viewed section 11(b) as a restatement of the existing law. Nothing in this Act is intended to alter the Secretary's authority under existing law to determine the value of the oil or gas for purposes of collecting royalties.

The Administration's bill did not address the authority of the Secretary to take oil or gas in kind on existing leases. Nothing in this Act is intended to alter the Secretary's authority under existing law to do so.

Section 12 of the Administration's bill, entitled "Secretary's Independent Authority to Collect Royalty," would have provided the Department of the Interior with an absolute defense against lawsuits alleging that the Department sold royalty crude oil taken in-kind at prices not permitted under Department of Energy regulations implementing the Emergency Petroleum Allocation Act of 1973. The Committee deleted this section because it was not addressed by the Linowes Commission and because it does not contribute to the effectiveness of the Federal royalty management program.

Section 17 of the Administration's bill pertained to the disclosure of trade secret, proprietary, or other privileged information. The Committee deleted this section, intending that existing law govern these matters.

Section-by-Section Analysis

SECTION 1

This section sets forth the short title of the bill.

SECTION 2

This section sets forth findings and purposes.

SECTION 3

This section provides definitions for various terms used throughout the bill.

SECTION 4(a)

This section directs the Secretary to prescribe regulations reasonably necessary to accomplish the purposes of this Act.

SECTION 4(b)

This section makes any rules and regulations issued to implement the bill subject to the Administrative Procedures Act.

SECTION 4(c)(1)

This section allows the Secretary discretion to apply new regulations promulgated under the provisions of this bill to existing Federal and Indian oil and gas leases.

SECTION 4(c)(2)

This section gives the Secretary authority to contract with non-Federal inspectors, auditors and enforcement officials.

SECTION 4(d)

This section directs the Secretary to deposit royalties funds derived from Indian land in appropriate accounts as soon as practicable.

SECTION 5(a)

This section requires the Secretary to establish procedures to ensure that leases which produce or which are expected to produce significant quantities of oil or gas are inspected no less than once a year.

SECTION 5(b)

This section requires the Secretary to establish and maintain an audit and inspection training program.

SECTION 5(c)

This section requires the Secretary to select accounts for audit either on his own initiative or upon written request of a State, Indian tribe or Indian allottee, alleging good cause for selection of the account. Company-wide audits may also be conducted.

SECTION 6(a)

This section requires obligated lessees to make royalty payments in the time and manner prescribed by the Secretary and to notify him of any assignment of an obligation to make any payments.

SECTION 6(b)

This section requires lease operators to develop and comply with site security plans which conform with minimum standards prescribed by the Secretary, to notify the Secretary not later than the fifth business day after a new well begins production or an old well begins new production, and to prepare, maintain, and make available required records.

SECTION 6(c)

This section requires any person transporting oil subject to the Act by motor vehicle to carry documentation showing the amount, origin and destination of the resource.

SECTION 7(a)

This section gives the Secretary hearing, investigation, audit, or inquiry authority appropriate to carrying out his duties under this Act. Prior notice is required.

SECTION 7(b)

This section gives district courts of the United States jurisdiction to compel actions by persons who refuse to obey subpenas issued by the Secretary, and imposes a penalty for such refusals.

SECTION 7(c)

This section permits any authorized representative of the Secretary to stop any motor vehicle that he has probable cause to believe is carrying an oil resource from or allocated to a federal lease site to determine whether the driver has the documentation required under Section 6(d).

SECTION 7(d)

This section provides that inspections may be conducted without notice if the Secretary develops appropriate guidelines.

SECTION 7(e)

This section provides that the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

SECTION 8

This section authorizes the Attorney General to seek injunctive or specific enforcement relief in the district courts of the United States.

SECTION 9

This section authorizes the Secretary to reasonably require, by rule, any lessee, operator, or person engaged in the transport of oil or gas prior to the first sale, or any person involved in the first sale of oil or gas, to establish and maintain reports and provide information.

SECTION 10(a)

This section amends the Mineral Land Leasing Act of 1920 to allow sharing of interest and other moneys collected under this Act, except civil and criminal penalties, with the States. It also provides for payments to the States more often than twice a year.

SECTION 10(b)

This section provides that a State or Indian tribe may receive fifty per centum of any civil penalties collected resulting from activities conducted by the State or tribe pursuant to cooperative agreements or a delegation of authority by the Secretary. Moneys so received will be offset against compensation due the State or tribe under Section 14 and Section 15.

SECTION 10(c)

This section directs the Secretary to charge an interest rate on late royalty payments which is an adequate incentive for timely payment. The rate is set by the Secretary of the Treasury.

SECTION 10(d)

This section requires interest payments to be made to Indian tribes and Indian allottees on royalty payments due to them.

SECTION 10(e)

This section prohibits the asessment against a State of any interest or penalties found due against the Department of the Interior for their failure to comply with the Emergency Petroleum Allocation Act of 1973 or Department of Energy regulations thereunder regarding crude oil pricing. Any State share of an overcharge shall be assessed against moneys found due the State as a result of "look-back" audits of royalty accounts.

SECTION 11

This section makes lessees liable for royalty payment on oil or gas lost or wasted due to negligence or failure to comply with rules, regulations, orders or citations under this Act.

SECTION 12

This section establishes three levels of civil penalty liability for persons who violate provisions of this Act, any mineral leasing law, or any rule or regulation thereunder.

SECTION 12(a)

This section sets an upper limit of $500 per violation for each day of violation and generally requires notice of a violation and an opportunity to comply before a penalty would be assessed.

SECTIONS 12 (b)-(c)

These sections prescribe substantially higher penalties for certain more serious violations which are committed knowingly or willfully.

SECTION 12(d)

This section requires opportunity for a hearing on the record before any penalty under this section is collected.

SECTION 12(e)

This section authorizes the deduction of penalties under this section from any sums owed by the United States to the person charged.

SECTION 12(f)

This section authorizes the Secretary to compromise penalties under this section on a case-by-case basis.

SECTION 13

This section classifys that the civil penalties of Section 12 are in addition to the criminal penalties in existing law.

SECTION 14(a)

This section provides that the Secretary is authorized to enter into a cooperative agreements with any State or Indian tribe to share royalty management information and to carry out specified activities. However, the Secretary shall not enter into a cooperative agreement with a State with respect to Indian lands, except with the permission of the tribe involved.

SECTION 14(b)

This section provides that a cooperative agreement shall be in accordance with the Federal Grant and Cooperative Agreement Act of 1977, and shall contain such terms and conditions as the Secretary deem appropriate, including a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed-upon activities.

SECTIONS 14(c)–(d)

These sections establish the extent of liability for disclosure of information provided pursuant to a cooperative agreement under this section or a delegation under Section 15.

SECTION 15

This section provides that the Secretary is authorized to delegate his authorities to conduct inspections, audits, and investigations, and to collect royalties, interest, and civil penalties to a State which has made a written request. The Secretary cannot delegate authorities as to Indian lands within a State without permission of the Indian tribe. The Secretary may delegate only upon a finding that the State has adequate resources, will effectively administer the delegated authorities, and that the delegation will not create an unreasonable burden on any lessee. The Secretary shall promulgate rules which define those functions which must be delegated together to avoid duplication and which provide for uniformity among the States. The section also provides for revocation of the delegated authorities where appropriate, compensation to the States for necessary costs, and the mechanism by which the States will transfer to the Federal Government collected funds.

SECTION 16

This section specifies the relationship of this Act to other laws.

SECTION 17

This section authorizes the appropriation of such sums as may be necessary to carry out the provisions of this Act.

SECTION 18

This section provides a six-year statute of limitations.

SECTION 19

This section provides that the Secretary shall submit to Congress within one year a report regarding the adequacy of royalty management for minerals other than oil or gas.

SECTION 20

This section pertains to the severability of the provisions of this Act.

Cost and Budgetary Considerations

The following estimate cost of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Alice M. Rivlin
Director

July 30, 1982

Honorable James A. McClure
Chairman
Committee on Energy and Natural
Resources
United States Senate
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman:

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared a cost estimate for S. 2305, the Federal Royalty Management Act of 1982, as ordered reported by the Senate Committee on Energy and Natural Resources on July 27, 1982.

This bill reaffirms and revises existing laws concerning the management of royalties from oil and gas produced on federal and Indian lands and the Outer Continental Shelf (OCS). It requires the Secretary of the Interior to perform annual inspections of leases producing significant quantities of oil and gas; to conduct special audits; to provide training for inspectors and auditors; and to study and recommend policies for the royalty management system for minerals other than oil and gas. The Secretary and his authorized representatives are authorized to inspect lease sites and related facilities, and to conduct hearings and investigations. The bill also increases civil penalties for noncompliance. Under certain conditions, the Secretary may delegate royalty management responsibilities to states, and may enter into cooperative agreements with states or Indian tribes for performing certain functions. The Secretary is authorized to compensate states and Indian tribes for the costs of activities undertaken pursuant to a delegation or a cooperative agreement. S. 2305 also clarifies the obligations of lessees, operators, transportors, purchasers, and other persons, especially regarding reporting, recordkeeping, and site security. The bill authorizes such sums as may be necessary to carry out the provisions of the act, effective October 1, 1982.

CBO estimates that this bill will result in no net increase in costs and could result in savings over the fiscal years 1983 through 1987. The costs associated with the enactment of S. 2305 are estimated to be approximately $10 million in fiscal year 1983, increasing gradually to $15 million by 1987, assuming appropriation of the necessary amounts each year. Offsetting these costs, however, are potential increases in receipts derived from improved collection of oil and gas royalties and from higher civil penalties. Based on data from the Department of the Interior and other agencies, additional receipts could total $25 million to $50 million each year (net of required payments to states), as a result of an improved royalty management system.

The estimated costs represent the increase in the Department's workload above that anticipated under existing law. Most of the costs of this bill are expected to result from the expanded duties of the Secretary pursuant to Section 5. Requiring at least one inspection of producing leases is estimated to increase costs by an average of $2.7 million each year. It is assumed that the Department would inspect all OCS leases and 80% of the onshore leases annually to verify production and site security measures. Inspections of onshore leases that do not produce oil or gas in significant quantities are expected to be done biennially. The estimate also includes an average of $3.2 million each year for quarterly inspections of the onshore leases having the highest royalty value (approximately 20 percent). All of the increased costs are expected to result from inspections of onshore leases. The current number of inspectors for OCS leases is sufficient to perform quarterly inspections of all producing leases.

Costs also are expected to increase by an average of $4.5 million each year for audits initiated by either the Secretary, states, Indian tribes, or Indian allotees. Requests for audits are expected to total 2,200 over the 1983-1987 period. This estimated workload is based on the expectation that the Secretary or other agencies will seek audits of the largest accounts to verify payments made under the existing royalty accounting system. The demand for such audits is expected to decline once the Department's new audit and financial system is in place.

Other costs associated with the bill are estimated to average $1.1 million per year, primarily as a result of Section 10, which entitles states to 50 percent of the interest penalties, thereby reducing federal receipts by approximately $1 million each year (and increasing state revenues by a corresponding amount).

Because there are no measures of the expected return from an improved royalty management system, there is no firm basis for estimating the increase in receipts that will result from the bill. Such sources as the Commission on Fiscal Accountability of the Nation's Energy Resources, the General Accounting Office, and the Department of the Interior have suggested, however, that the government currently is not collecting between 2 and 10 percent of the royalties due from oil and gas production on federal and Indian lands and the OCS. Recovering 2 percent of the onshore oil and gas royalties (which are estimated to total about $1.0 billion in 1983), would produce an additional $10-$20 million in receipts each year (net of required

payments to states) and would offset the estimated costs of the bill. The additional receipts would be greater if more than 2 percent is recovered, amounting to $25 million to $30 million per year if 5 percent is recovered. Because the bill sets no minimum civil penalties and because there are no precedents for estimating the level of violations, CBO has no basis for estimating the change in receipts from these provisions.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin
Director

cc: Honorable Henry M. Jackson
Ranking Minority Member

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out the provisions of S. 2305:

It is difficult to predict how many individuals or other entities would be significantly affected by the implementation of S. 2305. Much of the bill incorporates authority already in existing law for which regulations are already in existence. However, several sections do provide new regulatory authority for the Secretary of the Interior. For example, section 4(a) allows the Secretary to prescribe such rules and regulations as may be reasonably necessary to accomplish the purposes of this Act. Section 6 imposes new duties on lessees, operators, and motor vehicle transporters. Section 9 authorizes the Secretary to prescribe such recordkeeping requirements as may be essential to implement the bill or determine compliance with rules or orders issued under its authority. In Section 15 the Secretary is instructed to promulgate regulations, if any, which must be carried out jointly in order to avoid duplication of effort between the Interior Department and States to whom royalty management duties may be delegated under the authority of this section.

It is estimated that the oil and gas industry will be the prime industry impacted by these new royalty collection regulations. However, the actual economic impact of the bill cannot adequately be assessed. However, it is anticipated that the bill's implementation will result in additional royalty revenue being collected on behalf of the Federal Government and the States from Federal and Indian oil and gas leases. The personal privacy of individuals is not anticipated to be affected by this measure, as the records required under the bill relate to business records pertaining to the production, sale and transport of oil and gas resources produced on Federal and Indian leases. Some additional paperwork will be required as a result of this bill, but only that which is necessary to maintain an effective royalty accounting system.

Executive Communications

The pertinent legislative reports and communications received by the Committee from the Department of the Interior, setting forth Executive agency recommendations relating to S. 2305, are set forth below:

EX-299 (S.2305)

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

E&NR

MAR 24 1982 123123

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

There is enclosed the Administration's proposed "Federal Energy and Mineral Resources Act of 1982."

We recommend that this proposal be introduced, referred to the appropriate committee for consideration and enacted.

The Commission on Fiscal Accountability of the Nation's Energy Resources was appointed by me last July to examine allegations of waste and fraud in the royalty program, to investigate allegations of theft of oil from Federal and Indian lands, and to make recommendations for improving fiscal accountability of the Nation's energy resources. On January 21 of this year, the Commission completed its report and transmitted it to the White House. The Commission found that the past system of royalty management has resulted in a substantial loss of revenues to the U.S. Government, States, and Indian Tribes. Due to inadequate recordkeeping and lack of enforcement authority, there have been many instances of gross underpayment and nonpayment of royalties. Physical security of many leases is inadequate and often provides the opportunity for theft.

The Administration stands in strong support of the Commission's efforts to find solutions for these problems. The recommendations of the Commission were intensively reviewed in the course of the development of this proposed legislation. Many of the recommendations of the Commission have already been implemented administratively by this Department. Others will be the subject of future administrative action. The purpose of the enclosed legislative proposal is to implement those recommendations that require legislation.

Our proposed legislation would reaffirm the Secretary's rulemaking authority in the area of royalty management and collection. It would also impose specific duties on interest holders, lessees, operators, and motor vehicle transporters. It would provide for a system of civil and criminal penalties for violations of these new rules and duties. Our draft bill would strengthen the Secretary's audit and investigation functions and provide authority to enter into cooperative agreements with States to carry out many of the responsibilities of the Secretary. Finally, it would include a number of technical amendments that would make the valuation and distribution of royalties easier.

We urge that this legislation be considered as one of the highest priorities of the 97th Congress. We believe that the American people deserve to get a fair return on the sale of the mineral resources from their public lands.

The Office of Management and Budget has advised that enactment of this legislation would be in accord with the program of the President.

Sincerely,

SECRETARY

Enclosure

MAR 25 1982

A BILL

To ensure that all energy and mineral resources originating on the public lands and on the Outer Continental Shelf are properly accounted for under the direction of the Secretary of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Energy and Mineral Resources Act of 1982."

PURPOSE

SEC. 2. It is the purpose of this Act--

(1) to improve provisions of the mineral leasing laws related to obligations of lessees in the production of energy and mineral resources from the public lands and the Outer Continental Shelf,

(2) to clarify and reaffirm the authorities of the Secretary of the Interior to maintain properly a system of information regarding Federal energy and mineral resources in order for him to carry out effectively his duties under the mineral leasing laws, and

(3) to permit and encourage the development of enforcement practices to ensure prompt and proper collection of all mineral resources revenues owed to the United States and Indian lessors and those due to States in view of the significant Federal interest in assuring prompt and full collections of such royalties.

DEFINITIONS

SEC. 3 For the purposes of this Act, the term--

(1) "Federal land" means all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral

resources or mineral estates reserved to the United States in the conveyance of a surface or non-mineral estate.

(2) "Indian allottee" means any Indian for whom land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

(3) "Indian lands" means any lands of an Indian Tribe or individual Indian held in trust by the United States or which is subject to Federal restriction against alienation, but does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539).

(4) "Indian Tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of Annette Island Reserve, for which land is held by the United States in trust or which is subject to Federal restriction against alienation.

(5) "interest holder" means any person who holds any interest in a lease or who owes any royalty or other payment under any lease on the Outer Continental Shelf, Federal or Indian lands.

(6) "lease" means any contract, profit share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for and extraction and removal of a mineral resource.

(7) "lease site" means any lands or submerged lands on which exploration for and extraction and removal of a mineral resource are authorized pursuant to a lease.

(8) "lessee" means the person to whom the United States, an Indian tribe, or an Indian allottee issues a lease, or with whom the United States,

Indian tribe, or Indian allottee enters into a contract, or, in the case of a lease or contract held by co-lessees, the one co-lessee designated prior to Secretarial approval of operations involving production by the co-lessees to be the "lessee" for the purposes of this Act.

(9) "mineral leasing law" means any Federal law or provision of Federal law authorizing the disposition under lease of mineral resources, including, but not limited to, the Mineral Lands Leasing Act of 1920, the Outer Continental Shelf Lands Act of 1953, as amended, the Indian Leasing Act of 1938, Reorganization Plan No. 3 of 1946, and the Surplus Property and Administrative Services Act of 1949.

(10) "mineral resource" means any mineral that is in or on the Outer Continental Shelf, Federal, or Indian lands where it is sought or found, subject to disposition under lease under any mineral leasing law.

(11) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 83-31) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(12) "operator" means any person, including a lessee, who is responsible for the operations conducted on a lease.

(13) "production" means those activities which take place for the removal of minerals, including such removal, field operations, transfer of minerals off the lease, operation monitoring, maintenance, and work-over drilling.

(14) "royalty" means any payment based on the value or volume of production which is due to the United States or an Indian lessor on production of minerals from the Outer Continental Shelf, Federal, or Indian lands.

(15) "Secretary" means Secretary of the Interior or his designee.

(16) "State" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, America Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

SECRETARIAL AUTHORITIES

SEC. 4. (a) The Secretary may prescribe such rules and regulations as may be necessary or proper for the determination and collection of royalties on the production of mineral resources, the preparation and retention of records, the filing of reports, the conduct and frequency of audits, the enforcement of security at production sites and during the process of transporting mineral resources from such sites, and the imposition of penalties for failure to conduct properly such activities.

(b) Rules issued to implement this Act shall be issued in conformity with section 553 of Title 5 of the United States Code, notwithstanding section 553(a)(2) of that title.

(c) In carrying out his functions under subsection (a) of this section, the Secretary may also--

(1) apply to any existing leases, permits, or applications for leases or permits issued under the mineral leasing laws such rules and regulations as may be promulgated under the authorities granted by this Act; and

(2) contract with such non-Federal Government inspectors, auditors, enforcement officials, and other persons as he deems necessary to aid in the implementation of this Act in addition to entering into cooperative agreements as authorized under section 18 of this Act.

DUTIES OF INTEREST HOLDERS, LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

SEC. 5. (a) Any interest holder of any lease on the Outer Continental Shelf, Federal, or Indian lands shall--

(1) make any royalty or other payments required under such lease, as specified by statute, regulation, order, or the terms of the lease, by the date specified in same, or within such time and manner as may be specified by the Secretary; and

(2) notify the Secretary, within such time and in such manner as the Secretary may specify, of any assignments he may have made of any interest in a lease, of his obligations and responsibilities for royalty payments under a lease, and of any recordkeeping or other obligation as may be imposed by the Secretary under the authorities granted by this Act or any other mineral leasing law.

(b) Any lessee carrying out production on the Outer Continental Shelf, Federal, or Indian lands shall develop and comply with a site security plan, in conformance with such minimum standards as the Secretary may prescribe, which will insure full accountability for mineral resources produced or stored on the lease site.

(c) Any operator carrying out operations on any lease site on the Outer Continental Shelf, Federal, or Indian lands shall--

(1) notify the Secretary on the first business day after any new well begins production anywhere on a lease site by such means as the Secretary may prescribe;

(2) prepare and maintain all records and, upon request by the Secretary, submit any such records to the Secretary, on the exact quantities of any mineral resource that is produced, stored, or removed from the lease site and the method by which such resource is removed; and

(3) provide the Secretary with any information the operator has concerning the selling or distributing of any mineral resource produced from the lease site.

(d) Any person engaged in transporting by motor vehicle any mineral resource from any lease site on Federal or Indian lands shall carry, on his person or in his vehicle, documentation showing from whom such mineral resource was obtained and from which lease site or unit it was produced.

HEARINGS AND INVESTIGATIONS

SEC. 6. (a) The Secretary may conduct any hearing, investigation, audit, inspection, or other inquiry necessary or appropriate to his royalty and other lease management functions. In connection with such hearing, investigation, audit, inspection, or inquiry, the Secretary shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such affidavits, reports, and answers to questions as the Secretary may prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as the Secretary may determine;

(2) to administer oaths;

(3) to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;

(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths,

and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) The Attorney General or his designee, or a State or Indian Tribe acting pursuant to a cooperative agreement, may, in addition to any other remedies provided for in this Act, in any court of competent jurisdiction, initiate an action against any lessee, operator, or interest holder for an injunction to restrain any interference with the exercise of the right to enter or to conduct any activity authorized by this Act, or, in the case of a State or an Indian Tribe, authorized pursuant to such agreement.

(c) (1) On any lease site of Federal or Indian lands, any authorized representatives of the Secretary, including any State or Tribal law enforcement agency acting pursuant to a cooperative agreement, may stop or inspect any motor vehicle that they have probable cause to believe to be carrying a mineral resource and to lack the documentation required by this Act for the purpose of determining whether the driver has any such documentation.

(2) In any jurisdiction where there is in effect a valid State or tribal requirement that the driver of any vehicle carrying any mineral resource have documentation showing from whom the mineral resource was purchased and from which lease site it was produced, any authorized representative of the Secretary, including any State or Tribal law enforcement agency acting pursuant to a cooperative agreement, may stop or inspect any vehicle that they have probable cause to believe to be carrying a mineral resource and to lack the documentation required by this Act for the purpose of determining whether the driver has any such documentation.

(d)(1) Authorized representatives of the Secretary, including any State or Tribal enforcement official acting pursuant to a cooperative agreement, may inspect lease sites for the purpose of determining whether there is compliance with the requirements of this Act; site security plans, regulations, and standards developed pursuant to this Act; or with any citation, order, or decision issued under this Act. The right of inspection under this subsection shall be independent of, and supplementary to, any rights of inspection or entry possessed by the Secretary under existing or future leases.

(2) In carrying out the requirements of this subsection, no advance notice of an inspection must be provided to any person: Provided, That the Secretary shall develop guidelines setting forth the coverage and the frequency of inspections conducted pursuant to the inspection program which shall apply to all authorized representatives of the Secretary, including State and tribal enforcement officials acting pursuant to a cooperative agreement.

(3) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

(e) In case of refusal to obey a subpoena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as a contempt thereof and subject to a penalty of $10,000 a day.

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

SEC. 7. (a) In addition to any other remedy under this Act or any other mineral leasing law, the Attorney General or his designee may bring a civil action in the district courts of the United States, which shall have jurisdiction over such actions--

(1) to restrain any violation of section 14 of this Act; or

(2) to compel the taking of any action required by or under this Act or any other mineral leasing law of the United States.

(b) A civil action described in subsection (a) may be brought in the United States District Court for the District of Columbia or for the judicial district wherein the act, omission or transaction constituting a violation under this Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

REQUIRED RECORDKEEPING

SEC. 8. In addition to the provisions of sections 5(c)(2) and 5(c)(3) of this Act, every person who is a mineral resource interest holder, lessee, or operator on the Outer Continental Shelf, Federal, or Indian lands, or is otherwise engaged in the business of developing, producing, transporting, marketing, or refining mineral resources produced on the Outer Continental Shelf, Federal, or Indian lands shall establish and maintain any records, make any reports, and provide any information as the Secretary may, by rule, require for the purposes of implementing this Act or determining compliance with rules or orders prescribed under this Act. Upon request of any officer or employee duly designated by the Secretary every such interest holder, lessee, operator, or other person shall permit the inspection of appropriate books, papers, financial records, production records, documents, matters, and materials.

OFFSHORE REFUNDS

SEC. 9. (a) Section 9 of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1338), is amended by striking out section 9 and inserting in lieu thereof the following:

SEC. 9. "All sums paid to the Secretary under this Act shall be deposited in the Treasury of the United States and credited to miscellaneous receipts. This section shall not apply, however, to sums paid into the funds created by sections 302 and 402 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1812 and 1842).".

(b) Section 10 of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1339), is amended by striking out subsections (a) and (b), and inserting in lieu thereof the following:

"The Secretary is authorized to refund or credit any overpayments deposited in the Treasury under section 9 of this Act. When the Secretary is satisfied that any person has paid more than he was lawfully required to pay, he shall refund or credit the excess, without interest, to the person or his legal representative. There are hereby appropriated to the Secretary out of any funds in the Treasury not otherwise appropriated such sums as are necessary for the refunds authorized by this section. To receive a refund or credit, a person must file a request with the Secretary within three years after making the payment.".

ROYALTY INTEREST, PENALTIES AND PAYMENTS

SEC. 10. The first sentence of section 35 of the Act of February 25, 1920, as amended (30 U.S.C. 191), is amended by inserting "including interest charges, and any other monies, except civil penalty monies, collected under the Federal Energy and Mineral Resources Act of 1982, collected because of nonpayment, late

payment or underpayment of royalties," between "royalties" and "and" and by deleting "as soon as possible" and inserting in lieu thereof "as often as administratively convenient but at least".

VALUE OF PRODUCTION FOR ROYALTY PURPOSES

SEC. 11. (a) The Secretary shall include gross proceeds received from the sale of production of any mineral resource from any lease on the Outer Continental Shelf, Federal, or Indian lands in valuing production for royalty purposes, notwithstanding any incentives or regulated price relief heretofore or hereafter granted to the producer by a regulatory agency.

(b) In valuing production for computing royalty, the Secretary shall not be bound by a prior valuation.

SECRETARY'S INDEPENDENT AUTHORITY TO COLLECT ROYALTY

SEC. 12. Notwithstanding any other provision of law, no provision of the Emergency Petroleum Allocation Act of 1973 or regulation by the Department of Energy thereunder concerning crude oil certification or pricing shall be deemed to apply to the Department of the Interior with respect to crude oil taken by the Department of the Interior in kind as royalty. No action shall lie against the United States or an official thereof arising out of any alleged failure of the Secretary to have properly certified or priced, under the Emergency Petroleum Allocation Act of 1973 or regulations thereunder, oil taken in kind as royalty by the Department of the Interior. No claim for a refund of alleged overcharges pertaining to the certification or pricing under the Emergency Petroleum Allocation Act of 1973 or regulations thereunder of oil taken by the Department of the Interior in kind as royalty shall give any right of action against the United States or any official thereof under Section 210 of the Economic Stabilization Act, or any other provision of law.

EXPANDED ROYALTY OBLIGATIONS

SEC. 13. (a)(1) Section 8 of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1337), is amended by inserting between the second and third sentence of subsection (a)(1) a new sentence to read:

"Royalty and net profit share payment shall be due in amount or value of all production saved, removed, sold, used for exploration or production purposes, or lost or wasted from a lease: Provided, That no royalty shall be due on gas which is flared with prior approval from the Secretary.".

(2) Section 8 is further amended by deleting the words "saved, removed, or sold" in subsections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(F), and (a)(1)(G).

(b)(1) Section 17 of the Act of February 25, 1920, as amended (30 U.S.C. 226), is amended by adding a new sentence to the beginning of subsection (d) to read:

"Royalty on all leases issued under this section shall be due in amount or value of all production saved, removed, sold, used for exploration or production purposes, or lost or wasted from a lease; Provided, That no royalty shall be due on gas which is flared with prior approval of the Secretary.".

(2) Section 17 is further amended by deleting the words "removed or sold" in subsections (b)(1), (b)(2), (c), (i) and (k)(1)(C).

PROHIBITED ACTS

SEC. 14. It shall be unlawful for any person to--

(1) fail or refuse to comply with any requirement prescribed by section 5 of this Act, any rule or regulation promulgated under section 4 of this Act, or any citation or order issued under this Act;

(2) prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other information required by this Act;

(3) fail or refuse to permit entry, inspection, or audit, as required by section 6 of this Act;

(4) take, remove, or divert any mineral resource from any lease site on the Outer Continental Shelf, Federal, or Indian lands without having valid legal authority to do so or without paying full and proper royalty therefor;

(5) purchase, accept, sell, transport, or convey to another any mineral resource from any lease site on the Outer Continental Shelf, Federal, or Indian land, knowing or having reason to know that such mineral resource was stolen or unlawfully removed or diverted from such lease site; or

(6) misrepresent the nature or quality of any mineral resource transported by any means from any lease site on the Outer Continental Shelf, Federal, or Indian lands in any documents required by law or to any official charged with the enforcement of this Act which results in, or could result in, the underpayment of royalties.

CIVIL PENALTIES

SEC. 15. (a) (1) Any person who fails to comply with any provision of this Act or commits an act prohibited under section 14 shall be liable for a civil penalty of not more than $10,000 for each day such noncompliance continues.

(2) No penalty shall be collected until the person charged with a violation has been given an opportunity for a hearing. The Secretary may allow the person charged a reasonable opportunity to correct the violation.

(3) In determining the amount of such penalty or whether it should be remitted or reduced and in what amount, the Secretary may consider the nature, mitigating or aggravating circumstances, extent and seriousness of the violation or violations and, with respect to the violator, the size of the business, the person's ability to pay, the effect on the person's ability to continue to do business, the

person's history of previous violations, the degree of culpability, the person's demonstrated good faith in attempting to achieve rapid compliance after notification, if any, of the violation, and such other matters as the Secretary may deem appropriate.

(4) Upon administrative appeal or on his own initiative, the Secretary may compromise, reduce, increase, or otherwise modify, or remit, with or without conditions, any civil penalty which may be imposed under this section. The amount of such penalty, as finally determined, or the amount agreed to on compromise, may be deducted from any sums owing by the United States to the person charged. The Secretary in compromising, adjusting, or remitting any penalty under this section, may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the factors listed in paragraph (3) of this section.

(5) Any person who has requested a hearing in accordance with paragraph (2) of this subsection within the time the Secretary has prescribed for such a hearing and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the district court of the United States of the judicial district wherein the violation took place or in the District Court for the District of Columbia: Provided, That review by the district court shall be only on the administrative record and not de novo. Such an action shall be filed within 60 days of the Secretary's final order.

(6) If any person or, in the case of a corporation or other entity, any officer or agent fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (5), or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Secretary,

the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 60-day period referred to in paragraph (5) or the date of such final judgment, as the case may be. Judgment by the court shall include an order to pay.

(b) In addition to the penalty provisions above, the Secretary--

(1) may subject any lessee or interest holder to a penalty in the amount of three (3) times the royalty due but not paid after demand for royalty payment has been made; and

(2) may subject any operator who fails to comply with section 5(c)(1) of this Act to a penalty equal to the value of the total production between the date of required notification of the start of the new production and the date of actual notification.

(c) The Secretary shall charge interest on late royalty payments at a rate not less than the rate determined annually by the Secretary of the Treasury to be equal to the current average market yield on outstanding marketable obligations of the United States with periods of maturity of thirteen weeks, and adjusted to the nearest one-eighth of one percent. This charge shall not be considered a penalty for purposes of this section.

CRIMINAL PENALTIES

SEC. 16. (a) Any individual or, in the case of a corporation or other entity, any officer or agent who knowingly or willfully violates any provision of section 14 of this Act shall be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than one year for each violation, or both, in addition to or in lieu of any civil penalty which may be imposed for such violation under section 15 of this Act.

(b) Any individual who knowingly and willfully authorizes or orders any of the acts or practices constituting, in whole or in part, a violation of section 14 of this Act, shall be subject to penalties under this section, personally and in addition to any penalties to which any corporation or other entity may be subject under section 15 of this Act.

(c) Any individual who has obtained possession of, or has access to, material the disclosure of which is prohibited by section 17 of this section, and who, knowing that disclosure of such material is prohibited, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $25,000 or imprisoned for not more than one year, or both. Section 1905 of Title 18, United States Code, does not apply with respect to the publishing, divulging, disclosing, or making available information reported or otherwise obtained under this Act.

PROPRIETARY AND TRADE SECRET INFORMATION

SEC. 17. Trade secret, proprietary, or other privileged information obtained by the Secretary pursuant to this Act shall be exempt from disclosure under the provisions of section 552 of title 5, United States Code. The Secretary shall, by regulation, prescribe standards for identifying information as trade secret, privileged, or proprietary.

COOPERATIVE AGREEMENTS

SEC. 18. (a) The Secretary is authorized to enter into a cooperative agreement with any State to share minerals royalty management information in a timely manner and on a regular basis, to secure information for the cross checking of company submitted data, to carry out inspection and auditing activities in cooperation with, and under delegated authorities from, the Department, and to carry out any other activity described in subsection (b), (c), and (d) of section 6 of

this Act. The Secretary shall not enter into any such cooperative agreement with respect to any such activities on Indian lands, except with the permission of the Indian Tribe involved.

(b) The Secretary is authorized to enter into a cooperative agreement with any Indian tribe to share minerals royalty management information, in a timely manner and on a regular basis, to secure information from Tribes for cross-checking company submitted data, to carry out certain inspection and auditing activities in cooperation with and, under delegated authority from, the Department.

(c) Any cooperative agreement entered into pursuant to this section shall be in accordance with the provisions of the Federal Grant and Cooperative Agreement Act of 1977, and shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed upon activities.

(d) The United States shall not be liable for the wrongful disclosure by any State or Indian Tribe of any information provided to such State or Indian Tribe pursuant to any cooperative agreement authorized by this section.

RELATION TO OTHER LAWS

SEC. 19. (a) The authority to regulate and supervise mineral resource lease operations vested in the Secretary by this Act shall supplement any authority otherwise vested in the Secretary by the specific mineral leasing law under which specific leases are issued and maintained. In case of conflict between the provisions of this Act and any mineral leasing law, the provisions of this Act control. The civil and criminal penalty provisions of this Act do not affect the Secretary's authority to assess penalties under any mineral leasing law, or to

enforce the regulations or terms of leases or contracts by cancellation, specific performance, or other remedy authorized by law.

(b) No provision of this Act shall be construed to mean that the authority of the Secretary mentioned in such provision did not exist before the enactment of this Act.

FUNDING

SEC. 20. Effective October 1, 1982, and notwithstanding any other provision of law, there shall be deducted from royalty collections an amount not to exceed one percent of royalties estimated to be collected by the United States pursuant to the mineral leasing laws, after payments of windfall profit taxes. A proportionate amount of the total royalty collected from each royalty source shall be deducted prior to any division and distribution of such royalties to the States, Indian tribes, and individual Indian allottees, or the Treasury, and the sums so deducted shall be deposited in the Treasury as miscellaneous receipts. The amount of the deductions shall be calculated to equal the amount appropriated for royalty management activities, adjusted to compensate for prior year differences between appropriated amounts and amounts deducted.

For purposes of this section, the following activities shall be considered royalty management activities: accounting, auditing, product valuation, data collection, regulation writing, enforcement, and engineering technical support.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 10 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We understand that this week your Committee will be marking up S. 2305, the proposed "Federal Energy and Mineral Resources Act of 1982". As you know S. 2305, as introduced, is identical to the Administration's proposal. We believe that enactment of this legislation is crucial if we are to improve the Federal royalty collection system.

We have been fortunate to work closely with your staff on this legislation. They have put much time and effort into this proposal and we are very appreciative. However, we have reviewed the joint staff recommendation to the Committee and would like to make you aware of some major concerns we have with several of the proposed amendments to the bill.

First, we do not believe that the coverage of the legislation should be limited to just oil and gas resources. Part of the problem with royalty management to date has been the lack of uniform statutory requirements with respect to mineral royalty collection. The only way we can achieve a truly successful and cohesive royalty management system is to conduct the entire program based on one set of standards and requirements. We therefore urge the Committee not to limit the scope of S. 2305 to only oil and gas resources.

We note that the staff has recommended the deletion of section 9 of the bill. Subsection (a) of section 9 is a technical amendment of the Outer Continental Lands Act (OCS Lands Act) to clarify the effects of the Outer Continental Shelf Lands Act Amendments of 1978. Subsection (b) implements a specific recommendation of the Commission chaired by Mr. Linowes to study the fiscal accountability of the Nation's resources. Currently, section 10 of the OCS Lands Act requires that no refund may be made to any person who has overpaid royalties until notification of the proposed refund has been sent to the Congress and has sat before the Congress for 60 days. The Commission pointed out that this is a reporting requirement that causes long and unnecessary delays in providing refunds to those persons who, under the law, are entitled to receive them. To date, no such refund has ever been questioned by the Congress. We therefore believe that the removal of this requirement from the OCS Lands Act should remain in S. 2305.

Additionally, the staff has recommended that section 13 be rewritten to allow an exemption from expanded royalty obligations for reinjected gas and other minor uses of oil and gas for scientific and educational purposes. We support that amendment. However, the staff recommendation rewrites section 13 so that it is freestanding. We believe that section 13 should amend the OCS Lands Act and the Act of February 25, 1920 so that those Acts are clear on their faces on this issue.

Our greatest concern with the amendments recommended by the staff is with the changes to sections 14, 15, and 16, dealing with prohibited acts and civil and criminal penalties. One of those amendments would amend paragraph (2) of section 14 by limiting the prohibition on the preparation, maintenance, or submission of inaccurate or misleading information to "significantly" inaccurate or "materially" misleading information. We believe that inclusion of these two adverbs in that paragraph will give us serious problems in the administration of the royalty management program. We purposely drafted our proposal to give the Secretary broad authority under section 15 and to consider many factors in determining the amount of any penalties and to remit or reduce any penalty assessed. This is intended, among other things, to provide relief for those persons who have committed unintentional clerical or insignificant errors. By inclusion of the words "significantly" and "materially", the Congress would sanction the submission to the Federal Government of misleading information and make us then prove it was "materially" misleading before taking any action against the submittor, or even requiring the submittor to provide more accurate information in the future. We see no need for this change to section 14(2) and strongly urge the Committee not to accept this change.

Similarly, we see no reason for including a new paragraph (7) to prohibit the significant underpayment of royalties due. Section 14(1) of S. 2305 makes it unlawful for any person to fail or refuse to comply with any requirement prescribed by section 5. Section 5(a)(1) requires all interest holders to make any royalty payments required under their leases. Failure to make any such payment or full payment would be a failure to comply with this requirement and thus a prohibited act under section 14(1). The introduction of the term "significantly underpaying" implies that Congress would condone other underpayments of royalties.

A new two tier civil penalty system is also proposed by the staff in section 15. Section 15(a) of the joint staff recommendation would apply the penalty of up to $10,000 a day currently found in section 15 of S. 2305 only to the commission of acts listed in Section 14(3), (4), (5), or (7). The prohibited acts listed in paragraphs (1), (2), and (6) of section 14 would only be subject to penalties of up to $1,000 a day.

Although we do not see the need for a two tier penalty system because of the broad authority given to the Secretary in section 15 with respect to the assessment of civil penalties, we would not object to such a system if certain changes were made. First, we do not believe that the acts prohibited by section 14(1) should only be subject to a penalty of up to $1,000 for each day of the violation. The Linowes

Commission made very specific recommendations concerning duties that should be imposed on persons dealing with the nation's mineral resources. These duties are included in section 5 of S. 2305. The Commission specifically recommended as well that a penalty of up to $10,000 a day be assessed for failing to comply with these duties. The staff change would make such failures only subject to the $1,000 penalty. We therefore suggest that the language of section 14(1) through the first comma be broken out into a separate paragraph. Commission of acts prohibited by the new paragraph could then be subject to the higher $10,000 a day penalty. This change would make violation of rules or regulations or citations or orders subject to the lower penalty while keeping the penalty recommended by the Linowes Commission for noncompliance with the requirements of section 5.

We also believe that acts prohibited by section 14(2) (preparation of inaccurate and misleading information) should be subject to the higher penalty while acts prohibited by section 14(3) (refusal to permit entry) might better be subject to the lower penalty.

Finally, on this point, we note that the joint staff recommendation changes section 16, dealing with criminal violations, by only subjecting knowing and willful violations of paragraphs (3), (4), (5), and (7) to criminal prosecution. We object to this change. For example, we believe that anyone who knowingly and willfully submits grossly inaccurate records to the Federal Government or who knowingly and willfully grossly misrepresents the nature or quality of oil should be subject to criminal prosecution. We believe, in fact, that this change to section 16 might be interpreted as weakening existing Federal law which provides that defrauding the Federal Government is a Federal criminal offense. We urge the Committee to make all knowing and willful violations of the Act subject to criminal prosecution.

We have one other major concern with the staff recommendation. We note that they have deleted subsection (b) of section 19 which states that no provision of the Act shall be construed to mean that the authority of the Secretary mentioned in such provision did not exist before the enactment of this Act. Many of the authorities of the Secretary provided in S. 2305 already exist in the Secretary. We proposed that they be included in this legislation to provide them with a civil and criminal penalty structure and to provide a cohesive statuatory guideline for royalty management activities. Deletion of this subsection by the Committee may later be interpreted as lack of acknowledgment by the Congress of this point. Any such interpretation could cause serious problems for our current royalty management efforts. We urge you to refrain from deleting section 19(b) from the bill.

We have also received a number of amendments that may be presented by Senator Domenici at the markup. These amendments would virtually conform S. 2305 to H.R. 5121, a bill with which the Administration has some serious concerns.

Of most concern, is the title of H.R. 5121 that would provide for the State collection of Federal royalties. We support the enactment of a State program provision. The one contained in H.R. 5121, however, is highly objectionable. It requires the Secretary to turn his auditing and collection responsibilities over to any State that requests those responsibilities in writing regardless of their ability to administer those responsibilities. The Secretary would then have to continue to oversee the State's conducting of the collection program and would

have to be prepared to resume his responsibilities in the event that the State is not exercising due diligence in carrying out those responsibilities. The State would keep 50% of all royalties collected, then deduct up to 5% from the remaining 50% for the State's expense of administering the program. The Federal Government would then be left with the remaining 45% and would be responsible for paying the windfall profit tax due on the entire amount from that 45%. The royalty collection program is currently conducted with an amount of funds equal to about .1% of the royalties collected. Thus the Federal Government's share of royalty revenue would be significantly reduced by enactment of this provision. We would be happy to review and discuss with the Committee any State option proposal under consideration by the Committee, but request that no such proposal be adopted by the Committee until we have had this opportunity.

Finally, we also understand that the Inspector General has voiced two concerns with S. 2305 as introduced. First, he is concerned that the provisions of the bill might be read to restrict the independent authority of the Inspector General under the Inspector General Act of 1978. Although we have clearly stated in our section-by - section analysis of the bill that this was not our intent, we have no objection to adding language to the bill that would clarify this point. We have attached that language to this letter for your consideration. Second, he suggests that the bill be amended to give the Secretary authority to determine the amount of royalties owed to the United States in the case of persons who have kept inadequate records. The Secretary's determination would then be conclusive unless the affected person could prove that this determination was incorrect. This is a significant change from existing procedures with regard to the issue of burden of proof. We have some serious concerns about this change and would be happy to discuss them with your staff.

We appreciate the thorough and expeditious consideration that your Committee has given to this legislation.

Sincerely,

James G. Watt

SECRETARY

Amendment to S. 2305 concerning Inspector General's Authority

Page 24, line 20, insert after the period the following sentence: "No provision of this Act shall be construed to limit the authority of the Inspector General of the Department of the Interior under the provisions of the Inspector General Act of 1978 (P.L. 95-452) as amended."

Chuck
cc: Gary L.
Tony
Jerri

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20240

ENERGY AND NATURAL RESOURCES
RECEIVED
MAY 11 1982
WASHINGTON, D.C. 20510

MAY 11 1982

Honorable James A. McClure
United States Senate
Washington, D.C. 20510

Re: Proposed Federal Energy and Mineral Resources Act of 1982 (S.2305)

Dear Senator McClure:

The Department of the Interior has proposed the Federal Energy and Mineral Resources Act of 1982 which has been introduced in the Senate as S.2305 and is currently under consideration before your Energy and Natural Resources Committee's Subcommittee on Public Lands and Reserved Water. Since the bill contains several provisions relating to audit and investigative authority and responsibility in the Department I feel that it is important to clarify that it does not in any way limit the authority of the Inspector General of the Department.

Accordingly, I request that the following language be added as a new subsection (c) to Section 19 of the bill:

> No provision of this Act shall be construed to limit the authority of the Inspector General of the Department of the Interior under provisions of the Inspector General Act of 1978 (P.L. 95-452) as amended.

The Department of the Interior supports the addition of the above provision to the bill.

Additionally, recent audit activity by my office has indicated that in some instances lessees or other Federal lease interest holders do not maintain adequate records to enable auditors to precisely determine how much is owed to the U.S. Government. Although S.2305 provides penalties for failure to keep records, I feel that it should specifically address this problem and provide statutory authority for the Secretary to make a determination of unpaid amounts from the records and other information available to him and to bill the party determined to be responsible for such amounts. The provision I propose would make the Secretary's determination of amount owed conclusive unless the party billed can demonstrate to the Secretary the inaccuracy of his determination. This proposal would, of course, require the adoption of regulations setting forth strict guidelines for determining the amount owed and procedures to allow the party assessed to appeal the determination. I propose the following language be added as a new subsection (c) to Section 11 of the bill:

> In the event an audit, investigation or other review of records shall disclose to the Secretary's satisfaction that unpaid royalties are due on production from any lease, but the

amount of such royalties cannot be precisely determined due to the inadequacy of records of the lessee or other interest holder responsible for maintaining records for such lease, the Secretary, based on all records and other information available to him, shall determine the amount of unpaid royalties. The Secretary shall also identify the party responsible for the unpaid royalties and the date on which they were due and shall demand payment of such amount, plus interest from the date due, from the party determined to be responsible for said royalty payments. The determination of the Secretary shall be conclusive unless the party on whom the demand for payment is made can demonstrate to the Secretary the inaccuracy of the determination.

Collection of additional royalties and interest under this section shall be in addition to any civil or criminal penalties which may be imposed for violations of this or other Acts.

I strongly endorse expedited consideration and enactment of S.2305, especially with the above suggested additions. If enacted it has the potential to greatly assist the Department in assuring that the Government receives all revenues to which it is legally entitled.

I appreciate your consideration of the above matters. If you or your staff have any questions concerning these proposed additions to S.2305, please contact me at 343-5745 or Robert Beuley, my Assistant Inspector General for Audits, at 343-4252.

By separate letter I am also outlining these proposals to Senator Wallop.

Sincerely,

Richard Mulberry

Richard Mulberry
Inspector General

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 11 1982

Honorable Malcolm Wallop
Chairman, Subcommittee on Public
Lands and Reserved Water
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

You have requested answers to several questions about S. 2305, a bill identical to the Administration's proposed "Federal Energy and Mineral Resources Act of 1982". As you are aware, we strongly support and urge the enactment of S. 2305. We believe that enactment of this legislation is crucial if we are to improve the Federal royalty collection system. We are in the process of answering the submitted questions. This letter, however, addresses just two specific sections of the bill: Sections 11 and 12.

Some concern was raised at your May 3 hearing about the provisions of section 11 concerning the value of production for royalty purposes. The provisions of section 11 are fully in accord with the report of the Commission chaired by Mr. Linowes. Indeed, section 11 responds to pp. 22-25 of the report concerning collection of royalty based on fair market value (number 10, Internal Controls). Section 11 reaffirms the Secretary of the Interior's obligation and authority to collect royalty based on fair market value, both where that authority has been challenged in the past and where it could be challenged in the future. These provisions improve and clarify the mineral leasing laws by confirming long-standing Department of the Interior interpretations of those laws. In this regard, they are intended to ensure the payment in full of royalties owed to the United States. They are not intended to help the Secretary gather information.

Section 11(a) involves a disagreement between the Federal Energy Administration (FEA) later the Department of Energy (DOE), and the Department of the Interior. When FEA began regulating the price of oil, it provided a procedure to grant price relief to producers in certain situations. However, FEA asserted the United States should not collect royalties based upon gross proceeds accruing to the producer (federal and Indian lessees), but only on the price for which the oil would have been sold in the absence of the price relief.

The Department of the Interior never agreed to this FEA policy but insisted that its lessees pay royalty based on a determination of the value of production that included the price received by the lessees (the actual regulated "fair market value"). The Department of the Interior based its position on its long-standing interpretation of the mineral leasing laws. DOE later agreed with our interpretation and changed its rules in February 1980 to allow the payment of royalty based upon the price received by lessees. Because this rule did not apply retroactively, the Department must still resolve several situations where a lessee

reports -- typically 40-45 days after the month (or 30 day period) in which the oil was produced, and sometimes as late as 70 days after royal oil sales. As a result, the actual billings to royalty oil purchasers often occurred, necessarily, after the certification period imposed by Department of Energy regulations.

While several royalty oil purchasers are now seeking refunds of part of their purchase price, their main allegation is not that Geological Survey sold old oil at new oil prices but that, because of the procedural deficiencies in price certification, all sales must be deemed as lower tier. They seek refunds equal to the difference between what they paid for their oil and the deemed lower tier price.

We know of no small refiner harmed individually by these alleged overcharges. Many small refiners resold the oil at the "overcharged" price to other refiners and oil trading companies, then repurchased different oil. Additionally, those who did not directly pass the overcharge onto others reported the oil to the entitlements program (former 10 C.F.R. 211.67) using the price tiers given them by the U. S. Geological Survey. In other words, these refiners used these high-price categories to receive benefits--direct financial compensation for the tier of oil and its prices as so reported--under the entitlements program. The entitlements program reports cannot now be amended, which means that no royalty oil purchaser is under any obligation to pass the lowered "prices" to be gained if their refund suits are successful on to the purchasers of oil or entitlements. Thus, these refiners would get the double benefit of a refund from the Treasury, and the proceeds from sale at the original high price.

We want to make very clear that section 12 of the Federal Energy and Mineral Resources Act of 1982 does not violate the contract rights of small refiners. Under the 1978 OCS Lands Act amendments, the refiners claim they have a contract right to have OCS royalty oil priced according to DOE rules issued under the Emergency Petroleum Allocation Act (EPAA). However, the OCS royalty oil contracts have never said that the Department of the Interior is subject to the procedural aspects of DOE's rules. Also, under DOE's rules, DOE could and can grant "exemptions" and "exceptions" to the procedural and substantive oil price regulations. See 10 C.F.R. Part 205. These exemptions and exceptions could and can be applied retroactively. See, e.g., McMurrey Petroleum, Inc., 7 DOE 81,240 (1981). Consequently, a refiner's "right" to have royalty oil sold in the lowest price category does not vest until DOE has finally denied retroactive relief. This time has not yet come. Thus, Congress may cure these alleged violations without interfering with a vested contract right. Surely Congress may act if DOE may under DOE's own promulgated regulations.

Finally, the Department did not have to sell royalty oil. The Department could have taken the royalty in money, letting the producers keep the oil and receiving the same amount it got from the royalty oil purchasers based on the producers certifications. Small refiners then would have been left to the allocations of the major oil companies for oil supplies. Instead, the Department gave these refiners a

was subject to conflicting orders regarding proper royalty from FEA or DOE and this Department. This section will require Federal and Indian lessees to pay royalty based upon the value of their production as it was established by the Department in the past which includes the full price the lessees received.

Section 11(b) is intended to reaffirm the Secretary's authority to establish the value of production for royalty purposes.

In recent years, lessees have argued that the value of their production is finally established merely by their sales contracts, the acceptance by the Department of initial or estimated royalty payments, or other narrow bases. The Department has always disputed these contentions and continues to do so in order to assure collection of the proper royalty from the minerals owned by all Americans. This section merely reiterates and confirms the authority already granted to the Secretary by Congress under the mineral leasing laws to assure collection of proper royalty based on fair market value. A lessee would still have the right to show why the value established by the Secretary is improper. The term "valuing production" would, of course, be construed in consonance with the royalty provisions of the mineral leasing laws.

Two of the witnesses before the Committee discussed the problems they had with section 12. Section 12 provides a remedy to a terribly inequitable situation. Some refiners are now seeking huge refunds of money from the United States based on an alleged overcharge by the Department of the Interior for new production royalty oil sold to the refiners during oil price control. The new production, "high", price the Department charged the refiners came about because the oil was actually new production from leases. The refiners, in turn, sold, refined, or passed on the oil based on the high, new production price billed by the Department. In other words, they have already been paid or compensated by the high, new production price they passed on to consumers or other subsequent purchasers of the royalty oil. Yet, now, after decontrol, these refiners seek a double financial benefit: refunds from the public treasury based on an alleged failure during oil price control to comply with the procedural regulations of the Department of Energy (DOE). The second financial benefit is estimated in excess of 1.1 billion dollars.

When the Department sold royalty oil to refiners pursuant to the mineral leasing laws, it presented the refiners an estimated bill based on the producing lessee's previous record of "new" or "old" oil production. Then the price Geological Survey ultimately charged the refiners or purchasers of the royalty oil was the same the lessees (or producer) received for like oil from the same lease. Thus Geological Survey's accounting procedure attempted to realize the same cash value from the sale of royalty oil as it would from receiving the royalty share in money directly from the lessee.

The Department of Energy had rules which required the price certification of all first sales of production within a 60 day period. (10 C.F.R. 212.131). Failure to certify timely or properly resulted in the sale of oil being automatically deemed as lower tier or old oil, even if the oil were actually upper tier, stripped production, or other exempted production.

Because of the royalty accounting procedures used, Geological Survey would first find out whether oil was upper or lower tier from the lessee's monthly production

long-term supply of oil when the market was tight and their supply short. In return, the public has a right to get the same revenue it would have received if it had taken its royalties in money.

Nonetheless, the Department has carefully considered and reviewed the wording of proposed section 12. After a careful review, we propose a revision of section 12 that would not preclude law suits for inaccurate reporting or accounting. Furthermore, the proposed rewrite would not preclude legitimate claims where a refiner could demonstrate actual loss based upon late certification (other than the foregone windfall profits). We are optimistic that this revised language will both allow for the legitimate claims to proceed and preclude claims which are totally inappropriate and would give refiners a windfall.

We appreciate the thorough and expeditious consideration that your Committee has given to this legislation. Enactment of S. 2305 will be a most important step towards assuring the full accountability of the Nation's mineral resources.

Sincerely,

Donald Paul Hodel

[redacted] SECRETARY

SECRETARY'S INDEPENDENT AUTHORITY TO COLLECT ROYALTY

Sec. 12.(a) Notwithstanding any other provisions of law, no regulation by the Department of Energy under the Emergency Petroleum Allocation Act of 1973 concerning crude oil certification or pricing shall be deemed to override or repeal the Department of the Interior's obligation to receive fair market value for royalty oil. No claim may be asserted under the Emergency Petroleum Allocation Act of 1973, or regulations thereunder, against the United States, or any official thereof, pertaining to certification or pricing of oil taken in kind as royalty by the Department of the Interior except as provided in subsections (b) and (d) of this section.

(b) Provided jurisdiction otherwise exists in District Courts, claims shall be allowed for actual, direct financial loss incurred by purchasers who, based on presumed compliance by the Department of the Interior with Department of Energy regulations, sold royalty oil at less than cost. The claimant shall have the burden of producing evidence of and proving (1) actual, direct financial loss; (2) that it relied to its detriment on compliance by the Department of the Interior with Department of Energy regulations; and (3) price of purchase and sale. No claim or refund shall be allowed if the purchaser reported the royalty oil to the Department of Energy's entitlement program in the price tier ultimately certified or billed by the Department of the Interior. This provision shall apply to any cause of action commenced after January 1, 1981.

(c) For purposes of this section, the term "purchaser" means (1) a refiner entitled to purchase oil under a contract with the Department of the Interior, or (2) that refiner's assignee or successor in interest, or (3) any person claiming actual, direct financial loss because of purchase of crude oil from the refiner at the overcharged price.

(d) Nothing in this section shall prevent claims based on inaccurate reporting of data or inaccurate accounting provided such claims are otherwise authorized.

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
RESTON, VA. 22091

In Reply Refer To:
MMS-241749
Mail Stop 660

12 MAY 1982

Honorable Henry M. Jackson
Ranking Minority Member
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Jackson:

This is in response to your letter of March 30, 1982, concerning criminal prosecutions for royalty underpayments.

In order to seek criminal prosecution, an administrative agency must provide the Department of Justice with convincing evidence of willful and knowing violation of a Federal statute or regulation, fraud, or gross malfeasance on the part of the person or company doing business with the Government. Over the years, many instances of underpayment have been identified, but no instance of willful fraud or malfeasance has been uncovered. Underpayments have been found for the most part to be the result of clerical errors or disputes over interpretation of the royalty regulations. In cases where underpayments have been determined as a result of audit, the lessee or royalty payor is billed for the amount of the underpayment together with interest and late-payment penalties. If the underpayment is not paid within a reasonable period of time, the Government has the option of canceling the lease or reassigning it to another interest holder.

In response to your second question regarding referrals to the Office of Inspector General, on an average, we refer about 80-100 cases each year for review. The Inspector General and the Royalty Management Program, Office of Review and Analysis, conduct ongoing audits of all royalty payors and lessees. At the present time as a result of these audits, 86 open audit findings remain to be resolved. In some cases, the resolution of these findings is a lengthy and involved process since the company will appeal the finding. Quite often the appeals process goes all the way to Federal court if there is a large enough amount of money involved. However, in the last fiscal year, the Department of the Interior collected an additional $48 million in underpayments, interests, and penalties as a result of audits performed on payors and lessees.

Honorable Henry M. Jackson

We hope that this information will be of assistance to you.

Sincerely,

Wm D. Bettenberg

William D. Bettenberg
Acting Director

ADDITIONAL VIEWS OF SENATOR MELCHER

During the course of the Committee's consideration of this bill, my concern with the approach the Administration has taken on royalty management has been evident. It is my firm belief that very little improvement will actually take place as a direct result of this legislation, and a great deal of harm is likely to occur. I have offered numerous amendments in an attempt to improve a bad bill. With the help of the Chairman and other members of the Committee, many of these amendments were adopted, and, as a result, the bill we are reporting is vastly superior to the bill originally transmitted by the Administration. But we still have a long way to go. Let me state my objections.

1. MOST OF THIS BILL IS UNNECESSARY

The Secretary of Interior has plenty of authority in existing law to manage an effective royalty accounting system for oil and gas produced on Federal and Indian lands. The restatement or paraphrasing of existing statutory authority accomplishes nothing useful. Rather, it invites further amendment during the legislative process of provisions hard-won in the past and provides the bureaucracy with a pretext for literally volumes of new regulations to interpret the new phrasing of old law. The bill would be far shorter if it only conferred the needed new authority not already available to the Secretary in existing law.

2. JUST PASSING THIS BILL IS NOT ADEQUATE TO SOLVE THE PROBLEMS

The Department of the Interior is now operating and has for years operated an archaic royalty management system with totally inadequate staff of inspectors. Nothing about this bill changes this fact. This is immediately obvious when we realize that, in fact, this bill makes very few real changes in the authority under which Secretaries of the Interior have for years maintained an inadequate system. To improve things, forceful administrative action will be required, especially including the hiring of more inspectors who either have previous experience in oil and gas field operations or who have had extensive training and apprenticeship under experienced inspectors. Then the next step is uniform inspections with a clear understanding between the federal inspectors and operators what is required by the regulations.

The trouble starts in the field, where far too little monitoring of wells, production and movement of oil and gas is taking place. We can all meet in the Rose Garden, sign a bill and congratulate each other, but not one more inspection will occur if this Secretary of the Interior continues to act like the others we've had. One section of the Administration's bill was amended to require at least annual inspections of leases producing significant amounts and requires a training program for inspectors. But no time frames or guidelines are as yet required

by the bill. The Secretary of Interior so far has not demonstrated that these basic problems are being resolved.

3. THIS BILL COULD REDUCE NET REVENUE TO THE FEDERAL GOVERNMENT, STATES AND INDIAN TRIBES

It is in everyone's interest to produce the oil and gas on the public lands and on Indian lands. The nation needs more oil and gas. The Federal government, the States and the Indian tribes need the revenue from oil and gas royalties. Discouraging exploration, development and production of oil and gas on Federal and Indian lands just reduces Federal, State and Indian revenues. There is nothing good about that.

This bill is still top-heavy in red tape requirements that appear to me to be disincentives to oil and gas production from these lands. The question is, how much of a disincentive is it? If the persons who invest in and are engaged in oil and gas drilling decide that the new layers of red tape and regulation and the potential liability for huge fines resulting from this bill overshadow the potential rewards of the enterprise, everyone will be the loser. I submit that there is a good chance that this will be the result in the end, and this depends entirely on the actions of bureaucrats in the Department of the Interior over which we have very little—too little—control.

4. THIS BILL ASSUMES A NEW COMPUTER SYSTEM TO REPLACE THE ARCHAIC ROYALTY ACCOUNTING SYSTEM, BUT DOES NOT SET TIME FRAMES AND COULD HANDICAP THE SYSTEM BY ALLOWING FOR NONUNIFORMITY

Most of the inaccurate and delayed royalty collections from federal and Indian leases are the result of an old and inefficient system of reporting and collection that the Department of Interior has used on the federal on-shore leases and the Indian leases. This system has remained ancient and prone to error while most operators have modernized their accounting and payments to computerized systems.

Over a year ago, the Department of Interior started preliminary efforts with appropriated funds to develop a computer model and has contracted for a computer system to bring production reports and royalty accounting up-to-date. The Department will not have this system completed until late 1984 or early 1985.

The bill does not set a time frame for placement of this very important computerized function and, in fact, the bill leaves big loopholes that could result in non-uniform reporting and accounting by vague and loose provisions that allow individual states to take over those functions on a random, non-defined, pick and choose basis.

5. CONCLUSION

I have supported this bill in Committee as an exercise of the art of the possible. Either more amendments and simplifications are needed or a full substitute is called for, with provisions to insure that the Secretary of the Interior does the job for which he is paid. I have not seen any reason to change my mind on this.

JOHN MELCHER.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2305, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

(41 STAT. 437; 30 U.S.C., SEC. 191)

An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain

* * * * * * *

SEC. 35. (a) All money received from sales, bonuses, royalties, *including interest charges, and any other moneys, except civil and criminal penalty moneys, collected under the Federal Royalty Management Act of 1982 because of nonpayment, late payment, or underpayment of royalties*, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury [as soon as practicable] *as often as administratively convenient but at least* after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska [as soon as practicable] *as often as administratively convenient but at least* after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.

(b) * * *

(c) * * *

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